

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



JOINT APPENDIX

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IN THE  
**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

—  
**No. 18,091**  
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MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND  
MISCELLANEOUS TRUCK TERMINAL EMPLOYEES, LOCAL  
UNION No. 710, INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF  
AMERICA, *Petitioners,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

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On Petition to Review And Cross-Petition to Enforce An Order  
of the National Labor Relations Board

United States Court of Appeals  
for the District of Columbia Circuit

FILED NOV 15 1963

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*Martha J. [Signature]*  
CLERK





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MISCELLANEOUS TRUCK TERMINAL EMPLOYEES, LOCAL  
UNION No. 710, INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF  
AMERICA, *Petitioners*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

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**Prehearing Conference Stipulation**

I. STATEMENT OF THE ISSUES PRESENTED

1. Whether the Board properly found the New Addendum invalid within the meaning of Section 8(e) of the National Labor Relations Act, as amended.
2. Whether the issue of the validity of the First Addendum is moot and its litigation without useful purpose.

3. Whether the Board properly found that an object of the strike was to force or require self-employed truckers to join "the Union."

4. Whether the Board's order is valid and proper insofar as:

- (a) parts 1(c), (d), and (e) extend to "any other employer";
- (b) part 1(b) extends to Article XII(1) in toto; and
- (c) part 1(c) extends to "any other labor organization."

The parties agree that the phrase "any action" in part 1(a) of the Board's order means any action that is unlawful within the meaning of Section 8(b)(4) of the National Labor Relations Act, as amended. Further, the parties agree that the phrase "other employers" in parts 1(a) and (b) of the order means other employers in the Chicago meat packing industry.

## II. THE JOINT APPENDIX

The portions of the record to be printed as a joint appendix shall consist of:

1. This prehearing conference stipulation.
2. The following proceedings before the Board in Case Nos. 13-CC-260, 3-6, 13-CC-265, 13-CE-6:
  - (a) All items designated by petitioner in its "Designation of Record" dated September 30, 1963 (including the Decision and Order of the Board, dissenting opinions, and the Intermediate Report of the Trial Examiner);
  - (b) those additional items designated by the Board in its "Counter-Designation of Record" dated October 14, 1963.

Each party will bear the cost of printing the material it has designated, petitioner to bear the cost of printing

item 1. above. Any party or the Court, in the briefs and at or following the hearing in the case, may refer to any portion of the original transcript or record or exhibits herein which has not been printed or otherwise reproduced, it being understood that any portions of the record thus referred to will be printed in a supplemental joint appendix if the Court so directs.

### III. DATES FOR FILING OF BRIEFS AND JOINT APPENDIX

Petitioner will file its brief and the printed Joint Appendix on or before November 18, 1963. Respondent will file its brief on or before December 13, 1963. Any reply brief will be filed by December 28, 1963.

/s/ BERNARD DUNAU  
*Counsel for Petitioner*

Dated at Washington, D. C.  
this 14 day of October, 1963

/s/ MARCEL MALLET-PREVOST  
Marcel Mallet-Prevost  
*Assistant General Counsel*  
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.  
this 14 day of October, 1963

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### **Prehearing Order**

The parties in the above-entitled case having submitted their prehearing stipulation pursuant to Rule 38(k) of the General Rules of this court, and the stipulation having been considered, the stipulation is hereby approved, and it is

ORDERED that the stipulation shall control further proceedings in this case unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix of the parties herein.

Dated: Oct. 18, 1963

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF TRIAL EXAMINERS  
WASHINGTON, D. C.

MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND  
MISCELLANEOUS TRUCK TERMINAL EMPLOYEES, LOCAL  
UNION No. 710, INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF  
AMERICA, *Respondent*

and

WILSON & Co., Inc.	Case No. 13-CC-260-3
ARMOUR AND COMPANY	Case No. 13-CC-260-4
SWIFT & COMPANY,	
MEAT PACKING PLANT	Case No. 13-CC-260-5
SWIFT & COMPANY, SALES UNITS	Case No. 13-CC-260-6

and

MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND  
MISCELLANEOUS TRUCK TERMINAL EMPLOYEES, LOCAL  
UNION No. 710, INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF  
AMERICA

and

FROZEN FOOD EXPRESS	Cases Nos. 13-CC-265
BELFORD TRUCKING COMPANY, INC.	13-CE-6
REFRIGERATED TRANSPORT CO., INC.	
TRANS-COLD EXPRESS, INC.	
WATKINS MOTOR LINES, INC.	
ZERO REFRIGERATED LINES	

*Gordon J. Myatt, Esq., and Lawrence D. Ehrlich, Esq., for  
the General Counsel.*

*Lester Asher, Esq., Melvin Rosenbloom, Esq., and Bernard  
Dunau, Esq., for Respondent Union.*

*W. S. Ryza, Esq., and E. B. Miller, Esq., for Charging  
Parties in Cases Nos. 13-CC-265 and 13-CE-6.*



*Donald H. Bussman, Esq.*, for Swift & Company, Meat Packing Plant, and Swift & Company, Sales Units.  
*William J. Issacson, Esq.*, and *Norbert E. Anderson, Esq.*,  
 for Armour and Company.  
*John L. Cockrill, Esq.*, for Wilson & Co., Inc.  
 Before: *John H. Dorsey*, Trial Examiner.

### **Intermediate Report and Recommended Order**

#### **STATEMENT OF THE CASE**

On June 1, 1961,<sup>1</sup> the following charges were filed against Meat and Highway Drivers, Dockmen, Helpers and Miscellaneous Truck Terminal Employees Local Union No. 710, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter called the Union):

Wilson & Co., Inc. ....	13-CC-260-3
Armour and Company .....	13-CC-260-4
Swift & Company, Meat Packing Plant ...	13-CC-260-5
Swift & Company, Sales Units .....	13-CC-260-6

Wilson & Co., Inc. (hereafter called Wilson) alleged in substance that the Union was engaging in a strike and that its members employed by Wilson were refusing to work for Wilson; and, that an object of the strike was to force Wilson to enter into an agreement prohibited by Section 8(e) of the National Labor Relations Act (hereafter called the Act). Also, that a further object was to force Wilson to enter into an agreement which would cause the employer to cease doing business with persons who were not parties to a contract with the Union or who were not parties to a "Central States" or other "Over-the-Road Teamsters Motor Freight" contract. Wilson specifically charged the Union of violations of the (i) and (ii) provisions of Section 8(b)(4)(A) and (B) of the Act.

<sup>1</sup> All dates herein are in the year 1961 unless otherwise indicated.

Armour and Company (hereafter called Armour) in essence charged that the Union engaged in similar conduct as that described in the Wilson charge, and that an object of the strike was to force or require Armour to enter into an agreement prohibited by Section 8(e) of the Act. Armour charged the Union of a violation of Section 8(b)(4)(i) and (ii)(A) of the Act.

Swift & Company filed separate charges on behalf of its Meat Packing Plant (hereafter called Swift Plant) and its Sales Units (hereafter called Swift Sales). In each instance Swift charged that the Union caused its members who were employed by Swift to engage in a strike and to refuse to work; that an object of the strike was to force or require Swift Plant and Swift Sales to enter into an agreement proscribed by Section 8(e) of the Act.

On June 20, Frozen Food Express, Belford Trucking Company, Inc., Refrigerated Transport Co., Inc., Trans-Cold Express, Inc., Watkins Motor Lines, Inc., and Zero Refrigerated Lines (hereafter collectively referred to as Frozen Food, et al.) filed charges against the Union in Cases Nos. 13-CC-265 and 13-CE-6. The charge in 13-CC-265 was subsequently amended on July 21. In brief, the parties charged in Case No. 13-CC-265 that the Union, through its members, engaged in a strike on or about June 1 for the following objectives:

- (a) To force or require self employed truckers bringing meat into and out of Chicago to join a union.
- (b) To force Chicago meat packing companies to cease doing business with truckers who were not parties to a Teamster over-the-road contract.
- (c) To force or require employers to enter into an agreement prohibited by Section 8(e) of the Act.

The parties charged that the Union violated Section 8(b)(4)(i) and (II)(A) and (B) of the Act by virtue of this conduct.

In Case No. 13-CE-6 it was charged that the Union entered into contracts with Chicago area meat companies, on and after June 1, whereby the meat companies agreed, expressly or impliedly, to cease doing business with others. This activity was alleged to violate Section 8(e) of the Act.

The Acting Regional Director for the Thirteenth Region issued an order consolidating Cases Nos. 13-CC-260-3 through 13-CC-260-6 on July 7 and at the same time issued a Consolidated Complaint and Notice of Hearing. The Union filed an Answer on August 7 in which it generally denied the allegations of the Complaint.

On September 12 the Regional Director for the Thirteenth Region consolidated Cases Nos. 13-CC-265 and 13-CE-6, and issued a Consolidated Complaint and Notice of Hearing thereon.<sup>2</sup> The latter consolidated cases were, on September 27, consolidated with the cases involving Wilson, Armour and Swift in order to provide for a single hearing on the issues. The Union filed an Answer by way of a general denial to the Consolidated Complaint in Cases Nos. 13-CC-265 and 13-CE-6 on October 18. The issues were joined and a hearing was held before John H. Dorsey, the undersigned Trial Examiner, at Chicago, Illinois, on October 25 and 26. Thereafter the parties, with the exception of Wilson, each filed a brief.<sup>3</sup> The Union filed a motion to correct the record in certain respects. No opposition having been filed the motion is granted.

Upon consideration of the entire record and the briefs submitted and upon my observation of the demeanor of the witnesses, I make the following findings and conclusions:<sup>4</sup>

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<sup>2</sup> The Complaint was amended in writing on September 11 and orally on October 26, the first day of the hearing.

<sup>3</sup> The parties waived oral argument at the close of the hearing. Each was afforded the opportunity to file a brief.

<sup>4</sup> In resolving questions of credibility my findings are predicated in whole or in part upon my observation of the demeanor of the witnesses. See, Sahm, *Demeanor Evidence: Elusive and Intangible Imponderables*, 47 A.B.A.J. 580 (June 1961).

## FINDINGS OF FACT

### I. THE BUSINESS OF CHARGING PARTIES

Wilson is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of the laws of the State of Delaware. It is primarily engaged in the processing and/or wholesale distribution of meat and meat products, and has plants and facilities located in various cities and States of the United States including Chicago, Illinois.

Armour is, and has been at all times material herein, a corporation duly organized under, and existing by virtue of the laws of the State of Illinois. Armour is engaged in the processing and/or wholesale distribution of meat and meat products, and maintains plants and facilities in various cities and States of the United States including Chicago, Illinois.

Swift Plant and Swift Sales are divisions of Swift & Company, which is a corporation duly organized under, and existing by virtue of the laws of the State of Illinois. Swift & Company is engaged in the processing and/or wholesale distribution of meat and meat products, and maintains meat packing plants and sales units in various cities and States of the United States including Chicago, Illinois.

In the operation of their businesses, Wilson, Armour, and Swift each annually receives and ships meat and meat products, valued in excess of \$100,000, to and from points located outside the State of Illinois.

Frozen Food, et al., are each motor carriers engaged in the interstate transportation of food, meat and meat products under a certificate or permit issued by the Interstate Commerce Commission. During the year 1960, a representative period, each of said motor carriers derived reve-

nue in excess of \$50,000 from the interstate transportation of food, meat and meat products.

I find that Wilson, Armour, Swift Plant, Swift Sales and Frozen Food, et al., are each an employer within the meaning of Section 2(2) of the Act and each is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

The Union, I find, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE FACTS MATERIAL TO THE ISSUES

### A. *Background*

The Union represents truckdrivers employed in the Chicago area to transport meat and meat products. A collective-bargaining agreement known as the "Packing House Agreement," for a term from May 1, 1958, to May 1, 1961, and had been individually entered into with the Union by the small and large packers and others, and governed the terms of employment of truckdrivers employed by the packers in the Chicago area; also, who should make deliveries for the packers in the Chicago area other than their own employees. Article XII of the agreement defined the work covered by the agreement:

1. Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equipment, except when there is a lack of equipment at individual plants or branches, and then all effort will be made to contract a cartage company who employs members of Local No. 710. Employer agrees to do all possible to use own equipment at all times.

2. On deliveries to suburban points within the 50 mile zone, Common or Contract Haulers will be used only when no regular delivery service by the company's own trucks is maintained to such points. When deliveries are made on other than regular schedule delivery days, it is agreed that Common or Contract Haulers can deliver not to exceed 1,000 pounds on such days.

3. The above does not apply to express or railway pick-up by express company or railway company trucks. No pick-up by terminal company is to be re-loaded into overland or over-the-road trucks unless destination is beyond the 50 mile zone. This applies only to those plants, or branches, who at present are operating under Local No. 710 contract.

Article XII has been in the packing house agreements in the Chicago area for about 20 years.

The major packers in the Chicago area with which the Union contracts are Swift, Armour, and Wilson. As of May 1958, the commencement of the 1958-1961 contract term, Swift had employed about 160 truckdrivers covered by the agreement with the Union, Armour about 118, and Wilson about 55. At the time of the hearing, October 1961, Swift employed about 35 or 37 truckdrivers, a drop of 125 or 127; Armour about 37, a drop of 81; and Wilson about 6, a drop of 49. Thus, of a total employment of 333 truckdrivers at the beginning of the contract term, the complement had fallen to 80, a reduction in employment of 253 truckdrivers employed by Swift, Armour, and Wilson.

This sharp reduction in employment was caused by the relocation by Swift, Armour, and Wilson of their operations from Chicago to other cities. As explained by O'Brien, secretary-treasurer of and chief negotiator for

the Union, the major packers in 1955 gradually began moving their operations out of Chicago proper into other large cities where they already had packinghouses established. "Every time they moved a big operation out, why, it reduced the work force. It reduced the inside workers and also reduced the drivers to the point they were no longer needed to make the pickups and deliveries in the Chicago area." Truck deliveries of meat products to customers within a 50-mile radius of the Chicago Stock Yards from a plant facility of Swift, Armour, or Wilson located in the Chicago area continued, as before, to be made by drivers represented by the Union. However, with the relocation of operations outside of Chicago, truck delivery of meat products to the Chicago area from these out-of-State locations by Swift, Armour, and Wilson would often be made directly to the customer within the Chicago area by the over-the-road driver, thus bypassing the need for the services of the local driver. Only when a delivery is made from out of the city to a dock or terminal of a carrier in Chicago, or to a plant facility of Swift, Armour, or Wilson in Chicago, is the work of local transshipment performed by the local driver. Delivery by a member of the Union on this occasion is the consequence of the requirement of Article XII of the agreement.

As explained by O'Brien, the Union's secretary-treasurer, "We attempted to draft some language into the [1961] contract that would try and recover the jobs lost by the new policy of the larger packers of having their deliveries come in from out of the State into our area here by a road-driver that not only did the local driver's work, but absorbed the city jobs that at one time belonged to members of our organization, employees living here in the city of Chicago." The general means by which this objective would be accomplished would be that the "contract carrier or the common carrier would deliver the meat to the packer's plant or branch, or whatever facility he may

have for receiving it; and, in turn, our local man would make the city deliveries of the product hauled in from the various states outside of Illinois." As further elaborated by John T. O'Brien:

We were doing business with the major packing plants in the city of Chicago and we asked that they have the work done in such a fashion, that they have the loads delivered to facilities in the Chicago area and use the same operation that they had used for delivery in the city as they had when they had the packinghouses in Chicago, in place of delivering it directly to the customer around Chicago like they are doing today.

\* \* \*

We did not care how they got the deliveries into Chicago—by train, boat, or truck—as long as the local delivery men were members of our organization and we recovered the jobs we lost through the depression, so-called depression, of plants moving out of the area. It made no difference to us how the merchandise got here, as long as our people got the work.

The gravamen voiced by O'Brien was that members of the Union were not making all the Chicago deliveries. At no time did he assert that the grievance was that the packers' own employees were not doing the work.

### *B. The bargaining*

On February 1 the Union gave timely notice of its desire to negotiate a new agreement. Thereafter it called a meeting for April 21 of all the employers in the Chicago area engaged in trucking meat products with which it had a collective bargaining relationship. At this meeting O'Brien explained the problem which faced the Union:

He indicated that, in his opinion, the Union had a real problem in Chicago, that the larger packers had moved



out of the area, that product was being shipped into the Chicago area from out of state, that he felt that we had been able to arrive at a satisfactory settlement down through the years on economic matters, that they specifically had to have some language in the contract which protected the Union in terms of pickups and deliveries in the Chicago area, and he felt that this would be a real problem. . . .

Actual negotiations began on May 3. Negotiations "down through the years" had been conducted between the Union and a so-called packer group. The packer group at the outset of the 1961 negotiations was composed of Armour, Wilson, and a fluctuating number of smaller packers. Swift had withdrawn from the packer group about 6 years before the 1961 negotiations. Armour and Wilson withdrew from the packer group on May 12, 1961, and did not return for the remainder of the 1961 negotiations.<sup>5</sup> In previous years the history of negotiations had been that "agreement was reached between the Union and the packer group . . . : The Union then approached all other companies that they had contracts on the basis of the then agreed on agreement with the packer group, and . . . , in all cases, they each signed the same type of contract. . . ."

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<sup>5</sup> The packer group was composed of a group of so-called "national packers" who negotiated with the Union as a flexible group, but not as a formal association. Each of the employers in the group reserved the right to withdraw and negotiate separately in the event they disagreed with the policies of the majority of the group. Armour and Wilson were members of this group at the inception of the negotiations. Other employers in the group were:

Hygrade Packing	South Chicago Packing	Marhoefer
Oscar Mayer	Illinois Packing	B. Schwartz & Co.
Agar Packing	Central Meat	Rose Packing
E. W. Kneip	Packers Provision	Phaelzer Bros.
Roberts & Oakes	Carl Budding	(A division of
Dubuque Packing Co.	Graver Packing	Armour)

Before the first meeting on May 3 the Union had presented to the employers a 26-page statement of proposed amendments to the packinghouse agreement. Those directly pertaining to transportation of meat products in the Chicago area were Article XVI, "Job Classification Jurisdiction"; Article XXXIII, "Extra Equipment," a modification of paragraph 1 of Article XII of the 1958-1961 contract; and Article XXXVI, "Subcontracting." The proposed Article XVI reads:

The Employer agrees not to use road drivers, or city or suburban drivers to do any work, all work belonging exclusively under jurisdiction of Local No. 710 and, accordingly, to be performed by present members of the Union or those to become members of the Union.

The proposed Article XXXIII reads:

Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equipment, except when there is a lack of equipment at individual plants or branches, and *then a cartage company who employs members of Local No. 710 will be used.* Employer agrees to do all possible to use own equipment at all times.<sup>6</sup> (Emphasis supplied.)

The proposed Article XXXVI reads:

(a) The Employer agrees to refrain from using the services of any person who does not observe the wages, hours and conditions of employment established by Labor Unions having jurisdiction over the type of services performed.

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<sup>6</sup> Compare with paragraph 1 of Article XII, *supra*, p. 4.

(b) For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that no work or services presently performed or hereafter assigned to the collective bargaining unit will be subcontracted, transferred, leased, assigned or conveyed in whole or in part to any other Company, branch, or unit, person or non-unit employees, unless otherwise provided in this Agreement. The Employer may subcontract work when all of his regular employees are working.

At the May 3 meeting, O'Brien repeated what he had said at the April 21 meeting, explaining "how their membership was dwindling, that so-called gypsies were making deliveries in the city of Chicago, and that they had to have some protection in the form of a contract that would restrict both pickups and deliveries in the city." The packer group "indicated to the Union that we would have no part of any language restricting deliveries or pickups in the Chicago area." The Union indicated "that was the major issue . . . they would probably have to strike the industry in Chicago." No progress was made at the meeting.

An informal discussion took place on May 8 among the responsible representatives of the Union and the packer group. "Healy, vice president of Respondent Union, made it clear in this particular discussion that there was no question but what the end result would have to result in some specific restrictive language." The Union proposed the following language:

All work described and covered by this agreement shall be assigned to and performed exclusively by employees in the collective bargaining unit herein described and covered. No pickups or deliveries of meat and pack-

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<sup>7</sup> This was said by Michael Healy, vice president of the Union.

ing house products shall be made by any over-the-road, city or suburban drivers.

The representative of the packer group stated that he "didn't think this language was any different than the language they were requesting in their initial demand and that was the end of it." O'Brien "indicated that he wasn't particularly talking about language as proposed in the document that they had submitted to the packers. He felt that he had some type of language that could be worked out and it might be other than they had in that document, and he also indicated that possibly setting it up as an Addendum and not making it a part of the agreement might be the answer."

Before the ensuing meeting on May 12, "the majority of the packer group indicated a willingness to work out some type of compromise language which would get them off the hook on the subject of restrictions of deliveries."

At the May 12 meeting the Union was informed that Armour and Wilson had withdrawn from the packer group. Those remaining in the group submitted three proposals addressed to the issue of restrictive deliveries. Each was rejected by the Union. Healy, vice president of the Union, said "there was only one answer, and that was to hit the bricks." No resolution of the question was achieved at the May 12 meeting.

Further meetings between those remaining in the packer group and the Union were held on May 17, 22, and 23. Attempts were made to draft a provision which would satisfy the Union. On May 23 the then participants in the packer group drafted with the Union terms to settle the question of Chicago transportation and other economic issues which had divided the parties. The Union accepted these terms upon the express condition that it was an agreeable basis for settlement only "if Swift, Armour, and

Wilson would go along on the same basis"; if not acceptable to Swift, Armour, and Wilson, "the whole industry would be on the street."

The tentative agreement thus reached, as it pertains to the subject of Chicago transportation, is headed "Addendum to Agreement" (hereinafter referred to as the First Addendum) and reads:

#### ADDENDUM TO AGREEMENT

It is mutually agreed between the employer signators to this agreement and Local Union 710 that all meat and meat products which originate with the employer for truck shipment into and out of the Chicago City limits will be done by Certificated Carrier signators to the Central States or other Over-the-Road Teamster Motor Freight Agreement.

It is also agreed that all local overflow cartage shipments of meat and meat products originating with the employer in Chicago will be done by cartage companies which are signators to this agreement.

Company owned or Company leased equipment is exempt from this addendum, except Company over-the-road drivers will not be permitted to make retail store door delivery within the Chicago city limits. Leased equipment leased directly to the Company will be considered as Company owned equipment.

The reference to carriers who are "signators to the Central States or other Over-the-Road Teamster Motor Freight Agreement" is based on the terms of these agreements providing that "operations shall be dock to dock" without local "pickup and delivery." As explained for the Union by its secretary-treasurer, O'Brien, "There is a couple of clauses in there that protect the city, the local man in making city deliveries. In other words, it calls for

all work performed in the city to be done by local pickup and delivery men." Limitation of over-the-road truck shipments to carriers signatory to the over-the-road agreements would therefore effectively achieve the Union's objective.<sup>8</sup>

Negotiations then turned to Swift, Armour, and Wilson:

(a) On May 23 Wilson informed the Union that settlement of the economic issues on the basis of the tentative agreement reached with the packer group was acceptable to it, but that the Addendum was not acceptable.

(b) On May 25 the Union met with Swift to negotiate an agreement pertaining to its packing plant. The Union presented to Swift the tentative agreement which had been reached with the packer group. O'Brien explained, with reference to the addendum, that "there were numerous brokers with permits arranging for drivers to come over the road into Chicago and make direct deliveries to consignees in the city after long road trips. He contrasted this with the so-called legitimate situation whereby an over-the-road driver brought his load to a city dock or terminal where the city man then took over for local distribution. He said that the ICC regulations were being violated by the first category described; also mentioned that there were a good many city drivers out of work." No agreement was reached at that meeting or at the next meeting held on May 31. A similar impasse was reached at separate meetings conducted to negotiate an agreement covering Swift Sales.

(c) The Union met with Armour on May 29. Armour, as did Wilson and Swift, maintained that the Addendum was unlawful. No agreement was reached.

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<sup>8</sup> Article 40 of the Over-the-Road Motor Freight Agreement provides:

There shall be no pickup or delivery of a solid load in the area under the jurisdiction of I.B.T. Locals 710, 782, 801 and Independent Local 705, in the Chicago area, other than those that may be permitted under the terms of said Local's agreements.

On May 31 the packer group met with the Union and tried to persuade the Union not to call a strike against the employers then in the group because they had agreed to all the Union's terms. The Union replied that the entire industry—including Wilson, Armour, and Swift—had to accept the terms in order to prevent a strike.

### *C. The Strike*

On June 1 the Union called a strike of all the employers in the industry, and picketed their premises.

Between June 1 and June 5 the Union signed individual agreements with 17 employers settling the strike with them. These agreements included an Addendum in substantially the same form as the First Addendum tentatively agreed upon on May 23 with the packer group. It reads:

#### ADDENDUM TO AGREEMENT

It is agreed by and between the Employer and the Union that the following addendum shall be a part of the collective bargaining agreement in effect between the Employer and the Union. The Employer agrees that all meat and meat products which originate with the Employer for truck shipment into and out of the Chicago city limits will be delivered only to a city dock and not directly to a consignee and<sup>9</sup> will be done by a certified carrier who is a party to the Central States or other Over-the-Road Teamster Motor Freight Agreement.

All local overflow cartage shipments of meat and meat products originating with the employer in Chicago will be transported by cartage companies who are

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<sup>9</sup> The words "will be delivered only to a city dock and not directly to a consignee and" were deleted from 11 of the agreements and included in 6 of the agreements.

parties to the collective bargaining agreement referred as above.

Company owned or Company leased equipment is exempt from this addendum except that Employer over-the-road drivers will not be permitted to make retail store door deliveries within the Chicago city limits. Leased equipment leased directly to the Company will be considered the same as employer owned equipment.<sup>10</sup>

On June 5 a preliminary injunction proceeding pursuant to Section 10(1) of the National Labor Relations Act was instituted.<sup>11</sup> On the same day the Union presented Swift, Armour, and Wilson with a new Addendum in place of the First Addendum. The new Addendum, herein referred to as the June 5 Addendum, reads:

#### ADDENDUM

It is agreed by and between the Employer and the Union that the following addendum shall become a part of the collective bargaining agreement entered into between the Employer and the Union.

The Employer agrees that all meat and meat products which originate with or are processed or sold by the Employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer by employees covered by this agreement. It is specifically understood that all deliveries to customers or con-

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<sup>10</sup> Inasmuch as the Union admits in its brief that this Addendum "is substantially the same form as the First Addendum" the label "First Addendum" when used herein includes both.

<sup>11</sup> U.S.D.C. Northern District of Illinois (Civil No. 61C 960).



signees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement.

In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the Chicago city limits, it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

This addendum shall not in any way be construed to diminish the description of the work covered by this agreement as set forth in any provision of this agreement.

It is to be noted that the above Addendum was proposed on June 5 and after its submittal the Union continued the strike. Also, the Union modified its demands by proposing that paragraph 1 of Article XII (Article XXXIII of the Union's initial demands in the 1961 negotiations) read:

Livestock, meat and meat products for delivery by truck to a distance not exceeding fifty miles from the Chicago Stock Yards, whether to final distribution or point of transfer, shall be delivered by the Company in their own equipment, except where there is a lack of equipment at individual plants or branches, and *then a cartage company whose truck drivers enjoy the same or greater wages and other benefits as provided in this agreement will be used.* Employer agrees to do all possible to use its own equipment at all times. (Emphasis supplied.)<sup>12</sup>

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<sup>12</sup> Compare with the first proposed Article XXXIII, *supra*, p. 7.

Inasmuch as the Union later abandoned this proposal it is set forth only as evidence of the Union's intent.

The strike was settled on June 6. On that day memoranda of agreement were executed by the Union, Swift, Armour, and Wilson setting forth the terms of settlement of the economic issues. It was agreed that Article XII of the previous contract would be unchanged. An oral understanding was also reached to the effect that the agreements in final form which would thereafter be executed would incorporate the Addendum proposed by the Union on June 5 as an appendix with the stipulation that bargaining and a strike to secure its adoption would be deferred until its validity was determined by the Board and a court of last resort. This oral understanding was reduced to final written form in the following strike settlement agreement which was later executed:

1. The Union agrees on behalf of itself and its members, except as specifically provided otherwise below, that it shall not engage in a strike, stoppage, slowdown, or other suspension of work, or picketing, regarding the provision hereto annexed and marked "Exhibit A" [the new Addendum] (now the subject of charges before the National Labor Relations Board), or any variation thereof.
2. The Company agrees that if and when a decision of the National Labor Relations Board or (in the event that such decision of the National Labor Relations Board is the subject of appellate review within sixty (60) days of such decision) a final determination by a court of last resort concludes that "Exhibit A" is valid, it shall, upon thirty (30) days' notice in writing from the Union, bargain collectively regarding the subject matter of the aforesaid "Exhibit A".
3. In the event that there is a final determination by a court of last resort that the aforesaid "Exhibit A" is valid, and, thereafter, the parties (the Company and the Union) fail to reach an agreement regarding the

subject matter referred to in "Exhibit A", the Union may engage in a strike and the Company may engage in a lockout with reference thereto.

On June 6 at the same time that agreement was reached with Swift, Armour, and Wilson, by mutual agreement with all other employers in the industry with whom the Union had negotiated in 1961, the Union cancelled all agreements which incorporated the First Addendum which had been entered into between June 1 and June 5; and, no agreements of the kind consummated during that period remained in effect after that time. On June 6, at the same time and in addition to the agreements reached with Swift, Armour, and Wilson, a new agreement was reached with all of the other employers in the industry, and the terms of this new agreement contain the same provision for strike settlement and the Addendum as was concluded with Swift, Armour, and Wilson.

In the 1961 agreements with Armour, Wilson, and all other employers in the industry, except Swift, Article XII was continued and carried over in the unchanged form in which it had existed for 20 years past.

It is undisputed that an object of the strike from June 1 to June 5 was to force or require Swift, Armour, and Wilson to agree to the First Addendum; and, an object of the strike from June 5 to June 6 was to force or require Swift, Armour, and Wilson to agree to the Addendum proposed by the Union on June 5.

#### *D. The activities of Frozen Food et al.*

O'Brien, the Union's secretary-treasurer, testified that the dispute concerning the various Addenda arose because motor carriers who are not parties to a Teamster's "over-the-road" contract are making deliveries to final destinations and accepting loads at the points of origin on ship-

ments which come into or go out of Chicago. In contrast to this method of operation, the Teamster's "over-the-road" agreements contain pickup and delivery clauses which require over-the-road carriers to deliver or pick up shipments at the carrier's terminal or dock and prohibit the delivery or acceptance of a load at the consignee's or consignor's place of business. Under these contracts, the shipment to and from a carrier's terminals or facilities must be assigned to local or city drivers who are members of the Union.

The six Charging Parties, Frozen Food et al., in Case Nos. 13-CC-265 and 13-CE-6, are all engaged in transporting food, meat, and meat products across State lines under certificates or permits issued by the Interstate Commerce Commission. Since at least 1955, these carriers, and others, who are not parties to Teamster contracts, have been making deliveries and pickups in Chicago for packers and their customers without a terminal stopover or the employment of local or city drivers. Within the past year, for example, each of the carriers in this case has made direct deliveries and pickups at the facilities of virtually all of the Chicago meat packers, including those of Swift, Wilson, and Armour.<sup>13</sup> Direct deliveries and pickups at the facilities of the packers' Chicago customers have also been made regularly without the use of local drivers.<sup>14</sup> Combination deliveries, where part of the load is delivered to a packer's place of business and the remainder is delivered directly to one or more of the packer's customers, are also frequent occurrences. As O'Brien testified, the

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<sup>13</sup> A substantial portion of each of the major packers' deliveries are made by outside carriers who pick up and deliver from and to consignees' docks. Ninety (90%) percent of Armour's and all of Wilson's deliveries are made by outside carriers.

<sup>14</sup> For example, a shipment by Armour may be made on one of the Charging Party's trucks from Armour's warehouse in Houston, Texas, directly to the consignee-customer, Illinois Packing Co., in Chicago; the delivery being made directly to the consignee-customer and not to Armour's Chicago facility.

Union's Addenda were intended to preclude the packers from utilizing the services of carriers who were not contractually required to hire the Union's members for all local deliveries and pickups.

Frozen Food et al. operate their business exclusively with trucks that are owned and operated by individual contractors. Under the terms of the applicable contracts, the contractors are fully responsible for the operation, care, and maintenance of their equipment; they have complete control over the method of delivery; they make their own arrangements concerning wages, hours, and conditions of employment; they hire, fire, and supervise their own employees; and they are paid a percentage of the gross revenue received by the carriers for the shipment.

Indicative of the immediate effect of the First Addendum: Agar Packing informed Watkins Motor Freight that they would no longer be used as a carrier for shipment of its products out of Chicago. This was based on the fact that the Addendum prohibited use of truckers who were not parties to a Central States or other Over-the-Road Teamsters agreement.

#### IV. PERTINENT SECTIONS OF THE ACT

Section 8(e) of the Act makes it an unfair labor practice "for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease doing business with any other person. . . ." Section 8(b) (4) provides that it shall be an unfair labor practice for a labor organization:

- (i) to engage in or induce or encourage any individual employed by any person engaged . . . in an industry affecting commerce to engage in a strike . . . or (ii) to threaten, coerce, or restrain any person engaged . . .

in an industry affecting commerce, where in either case an object thereof is:

(A) forcing or requiring an employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by Section 8(e) [or]

(B) forcing or requiring any person . . . to cease doing business with any other person. . . .

V. THE LANGUAGE OF THE ADDENDA, THE INTENT OF THE PARTIES AND THE SCOPE OF THE RESTRICTIONS IS CONTROLLING

It is undisputed that the Union went on strike on June 1 to force or require Wilson, Swift, and Armour to agree to the First Addendum; and the First Addendum would require that:

1. All meat and meat products which originated with Wilson, Swift, or Armour for truck shipment into and out of the Chicago city limits would be required to be shipped with truckers party to the Central States or other Over-the-Road Teamster Agreement; conversely, Wilson, Swift, and Armour would have to cease doing business with those truckers who had handled such shipments for them in the past who were not parties to the Central States or other Over-the-Road Agreements;<sup>15</sup> and

2. All shipments of meat and meat products originating with Wilson, Swift, and Armour in Chicago which could not be made by the companies with their own equipment and own employees could only be made by a cartage company having a collective-bargaining contract with the Union.

Also, it is undisputed that the Union submitted the Addendum of June 5 and continued the strike thereafter with

<sup>15</sup> Frozen Food et al. are not parties to such agreements.

the object of forcing or requiring Wilson, Swift, and Armour to agree to its terms. This Addendum provides that the products of Swift, Armour, and Wilson can be delivered within the city limits of Chicago by their employees who are members of the Union. But, if not delivered by the packers' own employees, all deliveries to customers or consignees within the city limits of Chicago would be required to be made by cartage companies having contracts with the Union. In other words interstate carriers of the packers' products would be forbidden to make deliveries to and pickups from the packers' customers or consignees in Chicago as they have since 1955. Instead the interstate carriers would be required to deliver to or pick up from a city dock, distribution or terminal facility—this being in conformity with the provisions of the Central States and other Over-the-Road Teamsters Agreements referred to in the First Addendum.

There is language in the Addendum submitted on June 5 which if read *in vacuo* would permit the packers to use, for Chicago area deliveries other than cartage companies having agreement with the Union; specifically

In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the Chicago city limits, it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

However, it is apparent that if circumstances arose making this provision applicable, the packers would be restricted in their choice of cartage companies to those who meet with the approval of the Union.

Although the Addendum of June 5 differs semantically from the First Addendum there is no difference in its prac-

tical effect. Union Secretary-Treasurer O'Brien made clear that the purpose and intent of the Addendum proposed by the Union on June 5 and the First Addendum was: (1) to stop interstate carriers making deliveries to and pickups from customers and consignees in Chicago; and (2) to have all deliveries and pickups in Chicago made only by members of the Union.

The Union devotes a considerable part of its brief arguing that the Addenda are "conventional 'work jurisdiction' or 'work assignment' agreements" and seeks to persuade that the Addenda are analogous to subcontracting clauses which seek to protect the work "regularly" done by the packers' own employees. That the work was "regularly" done by the employees of Swift, Armour, and Wilson is refuted by the facts. The facts reveal no dispute between the Union and packers with reference to deliveries and pickups made from and to the packers' Chicago facilities by the packers' *own* employees. The dispute arises from the packers moving their facilities from Chicago, starting in 1955, and thereafter making deliveries from out-of-State facilities by interstate carriers direct to customers and consignees in Chicago and pickups by interstate carriers directly from such customers and consignees for interstate transportation. The members of the Union *never* had done this work.

While the parties to this proceeding frequently refer to a bargaining unit, the contracts with the Union do not define such a unit. True, the Union has for many years bargained with all the packers in the Chicago area and has been successful in having each of them sign uniform individual contracts. But, the Union does not limit itself to bargaining with a packer for its employees. It goes beyond the employer-employee relationship in its insistence that each packer when it finds it necessary to make deliveries in the Chicago area by other than its own employees must contract with a cartage company who em-



employs members of the Union. This unquestionably projects into a field of work not "regularly" performed by the packers' employees. While under such circumstances the relationship between the outside cartage company and the packer is contractual, it is not a subcontract; it does not cover work "regularly" performed by the packers' own employees.

In any event it is of no consequence as to how the Addenda may be labeled. It is the language of the Addenda, the intent of the parties, and the scope of restrictions weighed against the proscriptions of Section 8(e) that is controlling. Cf. *Milk Drivers and Dairy Employees Union, Local No. 546 (Minnesota Milk Co.)*, 133 NLRB No. 123. In *Gallagher & Sons*, 131 NLRB No. 117, a case the facts of which are strikingly similar to those in the instant case, the Board stated:

Further, by proscribing contracts, "express or implied," Congress obviously intended that the thrust of Section 8(e) extend not only to contracts which clearly on their face cause a cessation of business, but also to those contracts which by their intended effect or operation achieve the same result. No other interpretation appears open or reasonable; else the efficacy of this section would be nullified. (Emphasis supplied.)

The *Gallagher & Sons* case followed *Employing Lithographers of Greater Miami*, 130 NLRB No. 107, in which the Board held:

... Congress was intent upon outlawing "hot cargo" clauses no matter how disguised. Probably no language can be explicit enough to reach in advance every possible subterfuge or resourceful parties. Nevertheless we believe that in using the term "implied" in Section 8(c) Congress meant to reach every device which, fairly considered, is tantamount to an agree-

ment that the contracting employer will not handle the products of another employer or cease doing business with another person. . . .

#### VI. THE ADDENDA ARE PROSCRIBED BY SECTION 8(e) OF THE ACT

Both Addenda would require the packers to cease doing business with interstate carriers to the extent that such carriers make deliveries to and pickups from customers and consignees in the Chicago area. Further, both would require the packers to cease and refrain from doing business with carriers in the Chicago area whose employees are not members of the Union or whose labor policies are not approved by the Union. The Board has uniformly held that Section 8(e) prohibits agreements that "directly or indirectly" require an employer to cease and desist from doing business with other persons. *Amalgamated Lithographers of America (Ind.)*, 130 NLRB No. 102; *Employing Lithographers of Greater Miami*, 130 NLRB No. 107; *Van Transport Lines, Inc.*, 131 NLRB No. 42; *Gallagher & Sons*, 131 NLRB No. 117; *Pilgrim Furniture Co., Inc.*, 128 NLRB 910; *District No. 9, International Association of Machinists, AFL-CIO (Greater St. Louis Automotive Trimmers)*, 134 NLRB No. 138; *Automotive Petroleum & Allied Industries Employees Union Local 618 (Greater St. Louis Automotive Trimmers)*, 134 NLRB No. 139; *Colorator Manufacturing Corp.*, 129 NLRB No. 704. *Quoderat demonstrandum*, the First Addendum and the June 5 Addendum come within the purview of Section 8(e) of the Act.

#### VII. VIOLATIONS OF SECTION 8(b)(4)(i) AND (ii)(A) AND (B) OF THE ACT

Having found that the Addenda are proscribed by Section 8(e) of the Act in that each would require "cease doing business with any other person," it follows that the Union, which admittedly called the strike on June 1 to

force or require Swift, Wilson, and Armour to agree to the First Addendum and continued the strike after June 5 to force or require those employers to agree to the Addendum proposed by the Union on that date, violated Section 8(b)(4)(i) and (ii)(A) and (B) of the Act. *Gallagher & Sons*, 131 NLRB No. 117.

VIII. THE UNION BY ENTERING INTO CONTRACTS INCLUDING THE FIRST ADDENDUM COMMITTED UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(e) OF THE ACT

Section 8(e) of the Act makes it an unfair labor practice "for any labor organization and any employer to enter into any contract, express or implied" whereby an employer agrees to engage in conduct proscribed in Section 8(e) of the Act. Since it has been found that the First Addendum comes within the proscriptions of Section 8(e), the entering into of a contract containing the First Addendum is an unfair labor practice both by the Union and employers party thereto. Therefore, by entering into contracts with 17 packers between June 1 and June 5, which included the First Addendum, the Union violated Section 8(e) of the Act. The employer parties to each of these 17 contracts likewise committed an unfair labor practice; but, the pleadings allege no such unlawful conduct. Confined by the pleadings I find that the Union by entering into contracts including the First Addendum committed unfair labor practices as defined in Section 8(e) of the Act.<sup>16</sup> The fact that these contracts were cancelled on June 6 is not a defense as suggested by the Union in its brief. The mere entering into an agreement proscribed by Section 8(e) constitutes a violation. *Mary Feifer d/b/a American Feed Co.*, 133 NLRB No. 23.<sup>17</sup>

<sup>16</sup> A person does not commit an unfair labor practice under Section 8(e) of the Act unless it enters into a contract or agreement proscribed by said Section.

<sup>17</sup> The Board found a violation in *Gallagher & Sons*, *supra*, where a period of 11 days was involved.

IX. IN VIOLATION OF THE ACT BOTH ADDENDA  
REQUIRE MEMBERSHIP IN THE UNION AS A  
CONDITION OF DOING BUSINESS

As testified to by O'Brien, the Union's secretary-treasurer and chief negotiator, the objective of the Addenda is to monopolize delivery and pickup of the packers' products in the Chicago area by members of the Union. Consequently, Frozen Food et al., by compulsion of the Addenda could continue to make deliveries to and pickups from the packers' customers and consignees in the Chicago area only if their employees become members of the Union. Self-employed truckers engaged by Frozen Food et al. would be required likewise to become members of the Union. Therefore, the strike of June 1 and its continuation after June 5 to force and require membership in the Union as an indispensable condition to do business with the packers violated Section 8(b)(4)(i and ii)(A) of the Act.

X. MISCELLANEOUS ARGUMENTS IN DEFENSE ADVANCED  
BY THE UNION IN ITS BRIEF

1. The Union advances as a defense that there were economic differences in addition to the dispute concerning the First Addendum when it called its strike on June 1. It is no longer open to question that if one of the objects of a strike is illegal the strike is tainted with illegality and becomes an illegal strike. *N.L.R.B. v. Denver Building and Construction Trades Council*, 341 U.S. 675, 698.

2. It is argued by the Union that the protection of the Addenda was needed to provide jobs for its members. Granting this to be so, economic necessity is not a defense to nor does it condone a violation of the Act. *Gallagher & Sons, supra*; *Employing Lithographers of Greater Miami, supra*.

3. Counsel for the Union argues that the words "cease or refrain" are used in that part of Section 8(e) which

refers to handling, using or dealing in another employer's products, while the single word "cease" is used in that part of Section 8(e) which refers to the cessation of business with any other person, means that agreements not to use the services of other employers are within the statutory interdiction only if they cause interruption of a continuous cause of conduct, or, in other words, that such agreements are permissible insofar as they cause a refusal to enter into a relationship which has never existed or to renew a relationship which has never existed or to renew a relationship which once existed but has now terminated.<sup>18</sup> This argument has no place here. The record shows that the relationship between Swift, Armour, and Wilson and the over-the-road carriers has been a continuous course of conduct, since 1955, which would be interrupted and brought to an end by operation of either of the Addenda.

#### THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Union set forth, *supra*, occurring in connection with the operations as described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### THE REMEDY

Having found that the Union has engaged in certain unfair labor practices, I recommend that an order issue that it cease and desist therefrom and that it take certain

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<sup>18</sup> The language "cease doing business" as used in Section 8(b)(4) of the Act has not been given such a narrow reading. See *Amalgamated Lithographers of America (Ind.)*, 130 NLRB No. 102. Cf. *Plumbers and Pipefitters Local Union No. 142 (Matera)*, 133 NLRB No. 33; *I.B.E.W. Local 712 (Havier)*, 134 NLRB No. 73; *Local 537 International Brotherhood of Teamsters (Lohman)*, 132 NLRB No. 67.

affirmative action designed to effectuate the policies of the Act.

The cease and desist provisions and affirmative action recommended refer specifically only to the Addendum of June 5 later agreed to and incorporated in contracts between the packers and the Union. The broad cease and desist provisions remedy, *inter alia*, unlawful provisions such as the First Addendum included in the contracts by and between the Union and 17 packers in the period from June 1 to June 5; also, clauses such as Article XXXIII which was one of the Union's demands when it went on strike on June 1.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

#### CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.
2. Swift Plant, Swift Sales, Armour, Wilson, and Frozen Food et al. are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
3. The First Addendum and the Addendum proposed by the Union on June 5 are within the purview of Section 8(e) of the Act.
4. The Union, by striking on June 1 with the objective of forcing or requiring Swift Plant, Swift Sales, Armour, and Wilson to agree to the First Addendum, violated Section 8(b)(4)(i)(ii)(A) and (B) of the Act.
5. The Union, by entering into contracts with 17 packers, between June 1 and June 5, which included the First Addendum, violated Section 8(e) and Section 8(b)(4)(i)(ii)(A) and (B) of the Act.
6. The Union, by continuing the strike after June 5 with the objective of forcing or requiring Swift Plant, Swift

Sales, Armour, and Wilson to agree to and include in a contract the Addendum submitted by the Union on that date, violated Section 8(b)(4)(i)(ii)(A) and (B) of the Act.

7. The Union, on and after June 6 by entering into agreements and contracts with Swift Plant, Swift Sales, Armour, and Wilson and other packers, which included the Addendum proposed by the Union on June 5, violated Section 8(e) and Section 8(b)(4)(i)(ii)(A) and (B) of the Act.

#### RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, I recommend that Meat and Highway Drivers, Dockmen, Helpers and Miscellaneous Truck Terminal Employees, Local Union No. 710, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining, giving effect to, or forcing the agreements and contracts entered into on and after June 6, 1961, by and between the Union and Wilson & Co., Inc. (herein called Wilson), Armour and Company (herein called Armour), Swift and Company, Meat Packing Plant (herein called Swift Plant), Swift & Company, Sales Units (herein called Swift Sales), and various other employers, insofar as said agreements and contracts provide:

The Employer agrees that all meat and meat products which originate with or are processed or sold by the Employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer

by employees covered by the agreement. It is specifically understood that all deliveries to customers or consignees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement.

In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the Chicago city limits, it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

This addendum shall not in any way be construed to diminish the description of the work covered by this agreement as set forth in any provision of this agreement.

(b) Entering into, actively maintaining, giving effect to, or enforcing any other contract or agreement, express or implied, whereby the employers named in (a), above, or any other employers, cease or refrain, or agree to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or from doing business with any other person.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Post in conspicuous places in the Union's business offices, meeting halls, and places where notices to members are customarily posted, copies of the notice attached hereto marked "Appendix A."<sup>19</sup> Copies of said notice to be furnished by the Regional Director for the Thirteenth

<sup>19</sup> In the event that this Recommended Order is adopted by the National Labor Relations Board, the notice shall be amended by substituting for the words, "PURSUANT TO THE RECOMMENDATIONS OF A TRIAL EXAMINER" the words "PURSUANT TO A DECISION AND ORDER." If the Board's Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" the words, "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."



Region, shall, after being duly signed by an official representative of the Union, be posted by the Union immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by the Union to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for the Thirteenth Region signed copies of the aforementioned notice for posting by Swift Plant, Swift Sales, Armour, and Wilson; and, all other employers party to an agreement with the Union which includes the provision set forth in 1(a), above; and, Frozen Food Express, Belford Trucking Company, Inc., Refrigerated Transport Co., Inc., Trans-Cold Express, Inc., Watkins Motor Lines, Inc., and Zero Refrigerated Lines, if the Companies agree, in places where notices to employees are customarily posted. Copies of said notice to be furnished by the Regional Director shall, after being signed by the Union, as indicated, be forthwith returned to the Regional Director for disposition by him.

(c) Notify the Regional Director for the Thirteenth Region in writing, within 20 days from the date of this Intermediate Report of the action taken by the Union to comply therewith.<sup>20</sup>

I further recommend that unless the Union shall within 20 days from the date of this Intermediate Report notify the said Regional Director in writing, that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Union to take the action aforesaid.

Dated at Washington, D. C.

JOHN H. DORSEY  
John H. Dorsey  
*Trial Examiner*

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<sup>20</sup> In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

## APPENDIX A

## NOTICE

## PURSUANT TO

## THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Delations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended by the Labor Management Reporting and Disclosure Act of 1959, we hereby notify you that:

WE WILL NOT enter into any contract or agreement, express or implied, with WILSON & CO., INC.; ARMOUR AND COMPANY; SWIFT & COMPANY, MEAT PACKING PLANT; SWIFT & COMPANY, SALES UNITS; or any other employer, whereby such employer ceases or refrains, or agrees to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or from doing business with any other person.

WE WILL NOT maintain, give effect to, or enforce the agreements and contracts entered into by the aforementioned employers and the undersigned union on and after June 6, 1961, insofar as said agreements and contracts provide that:

The Employer agrees that all meat and meat products which originate with or are processed or sold by the Employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer by employees covered by the agreement. It is specifically understood that all deliveries to customers or consignees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement.

In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the Chicago city limits, it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

This addendum shall not in any way be construed to diminish the description of the work covered by this agreement as set forth in any provision of this agreement.

Employees may communicate directly with the Board's Regional Office, Midland Building, 176 West Adams Street, Chicago 3, Illinois (Tel. No. Central 6-9660) if they have any question concerning this Notice or compliance with its provisions.

MEAT AND HIGHWAY DRIVERS, DOCKMEN,  
HELPERS AND MISCELLANEOUS TRUCK  
TERMINAL EMPLOYEES, LOCAL UNION No.  
710, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSE-  
MEN AND HELPERS OF AMERICA  
(Labor Organization)

Dated ..... By .....  
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

### Decision and Order

On January 25, 1962, Trial Examiner John H. Dorsey issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. Thereafter, the Respondent Union filed exceptions and briefs in support of the exceptions. Swift & Co. in behalf of its Packing Plant and the Sales Units, Armour and Company and the Charging Parties in 143 NLRB No. 117, Cases 13-CC-265 and 13-CE-6 filed limited exceptions with briefs in support thereof, as well as in support of the balance of the Intermediate Report. The General Counsel filed a brief in support of the Intermediate Report.<sup>1</sup>

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner as amplified in this Decision and Order.

### FACTS

For many years, Wilson, Armour and Swift as well as other packing companies in Chicago operated under a standard collective bargaining agreement with the Union's Local 710 of Meat and Highway Drivers relating to the terms and conditions of employment of their truckdrivers engaged in the hauling of meat and meat products within the Chicago area. The last packing house agreement with

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<sup>1</sup> The Respondent's request for oral argument is hereby denied, as in our opinion, the record, exceptions and briefs adequately present the positions of the parties.

Local 710 was for a term from May 1, 1958, to April 30, 1961. This agreement did not contain any restrictions on the packers' choice of over-the-road truckers or on the method of delivery of meat and meat products into the Chicago area, and for a number of years the packers used for this purpose the services of Frozen Food Express and five other interstate motor carriers. As to deliveries within the Chicago area, Article XII(1) of the said agreement required that such deliveries were to be made by the company in their own equipment, "except when there is a lack of equipment at individual plants or branches, and then *all effort will be made* to contract a cartage company who employs members of Local No. 710." (Emphasis supplied)

In the Spring of 1961 the Union and the packers began negotiations for a new contract. Local 710 presented to each of the packers a document entitled "Proposed Amendments to the Packing House Agreement." In addition to the economic demands, Local 710 sought to incorporate certain proposals relating to deliveries into the Chicago area of meat products which originated out-of-State, and to local deliveries and certain other proposals relating to subcontracting. By new Article XXXIII<sup>2</sup> it sought to amend Article XII (1) relating to deliveries by eliminating the words "all effort will be made to contract" and adding after "Local 710" the words "will be used." Thus, preference contained in Article XII (1) regarding the use of Union cartage equipment was to become especially mandatory. At some point in the bargaining negotiations Local 710 submitted to the packers a document entitled "Addendum to Agreement," hereinafter referred to as the First Addendum, which reads as follows:

It is mutually agreed between the employer signators to this agreement and Local Union 710 that all meat

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<sup>2</sup> The proposed Article XXXIII is set out in full in the Intermediate Report.

and meat products which originate with the employer for truck shipment into and out of the Chicago city limits will be done by Certificated Carrier signators to the Central States or other Over-the-Road Teamster Motor Freight Agreement.

It is also agreed that all local overflow cartage shipments of meat and meat products originating with the employer in Chicago will be done by cartage companies which are signators to this agreement.

Company owned or Company leased equipment is exempt from this addendum, except Company over-the-road drivers will not be permitted to make retail store door delivery within the Chicago city limits. Leased equipment leased directly to the Company will be considered as Company owned equipment.

Throughout the negotiations which commenced with the meeting on April 21 and concluded with the strike on June 1, the Secretary-Treasurer of Local 710, O'Brien, took the position that the restrictive provisions were necessary because since 1955 the major packers had been moving their packing plants out of Chicago into other cities<sup>3</sup> and had been utilizing over-the-road drivers to ship their meat and meat products into the Chicago area directly to the customers. Consequently, as the need for local pickups and deliveries diminished, the number of truck drivers employed by the three major packers also diminished. During the 1958-1961 contract term the number of truckdrivers employed by the major packers dropped from 333 to 78. Thus, O'Brien testified:

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<sup>3</sup> The decision of the major packers to decentralize their operations was in no way related to their collective bargaining relations with Local 710 or any other union. The decision was impelled by major changes in the raising and supply of live stock, the shift from rail to truck transportation, changes in marketing, and major population shifts.

We attempted to draft some language into the contract that would try and recover the jobs lost by the new policy of the larger packers of having their deliveries come in from out of state into our area by a road-driver that not only did the local driver's work, but absorbed the city jobs that at one time belonged to members of our organization, employees living here in the city of Chicago.

It was for this reason, O'Brien explained to the packers, that "they specifically had to have some language in the contract which protected the Union in terms of deliveries and pickups in the Chicago area, and he felt that this would be a real problem." This effort to secure some protective language in the contract was Local 710's major aim. The vice-president of Local 710, Healy, stated to the packers that if there were no agreement on this point, Local 710 would "strike the industry in Chicago." Despite the threat, the major packers refused to agree to the First Addendum contending that it was prohibited under Section 8(e) of the Act.

On June 1, 1961, Local 710 struck the major packers as well as all of the other packing houses in Chicago that refused to sign an agreement including the First Addendum, and picketed their premises. Between June 1 and June 5, Local 710 succeeded in obtaining individual agreements which incorporated the First Addendum with 17 packing houses. Wilson, Armour and Swift did not agree.

On June 5, a petition for injunctive relief under Section 10(1) was filed with the District Court; whereupon the Court issued a show cause order returnable the following day. On the same day, June 5, Local 710 withdrew the First Addendum and presented to Wilson, Armour and Swift the New Addendum. The strike continued. The New Addendum reads as follows:

It is agreed by and between the Employer and the Union that the following addendum shall become a part of the collective bargaining agreement entered into between the Employer and the Union.

The Employer agrees that all meat and meat products which originate with or are processed or sold by the Employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer by employees covered by this agreement. It is specifically understood that all deliveries to customers or consignees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement.

In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the Chicago city limits, it may contract with any cartage company whose truck-drivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

This addendum shall not in any way be construed to diminish the description of the work covered by this agreement as set forth in any provision of this agreement.

On June 6, in the midst of the injunctive proceeding, Local 710 agreed with Wilson, Armour and Swift to enter into a new packing house agreement carrying Article XII (1) unchanged,<sup>4</sup> incorporating the New Addendum as an Appendix with the stipulation in the Strike Settlement

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<sup>4</sup> The new Packing House Agreement with Swift & Co., Packing Plant and Sales Units does not contain Article XII (1).



Agreement that the bargaining with respect to the New Addendum and the strike to secure its adoption would be deferred until its validity was determined by the Board and the Court of last resort. The strike was settled on June 6. On that day, by mutual agreement with all other packing companies, Local 710 also cancelled all agreements entered between June 1-June 5 containing the First Addendum. On June 6, at the same time and in addition to the agreement reached with Wilson, Armour and Swift, Local 710 reached an agreement with all other packing houses, the terms of which contain the same provision for strike settlement and the New Addendum as was concluded with the major packers. The strike terminated on June 6, 1961.

The complaints and answers in this proceeding raise the following issues: Whether the provisions contained in the First Addendum, the New Addendum, and Article XII (1) of the agreement now in effect are agreements within the meaning of Section 8(e) of the Act; and whether by striking the packing industry to secure the adoption of the Addenda and for other objects, Local 710 violated Section 8(b)(4)(i)(ii)(A) and (B) of the Act.

*The First Addendum.* The Trial Examiner found that the First Addendum is an agreement prohibited by Section 8(e) of the Act which makes it an unfair labor practice "for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer agrees . . . to cease doing business with any other employer." The Respondent excepts. The First Addendum contains two provisions the legality of which is in issue. The first provision relates to the manner of deliveries into the Chicago area of meat and meat products, originating with the packers out-of-State. The second provision relates to the subcontracting of the overflow local cartage operations in the Chicago area. They will be considered seriatim.

*The first provision of the Addendum requires that*

“All meat and meat products which originate with the employer for truck shipment into and out of Chicago city limits will be done by Certificated Carrier signators to the Central States or other Over-the Road Teamster Motor Freight Agreement.”

As Frozen Food and the other interstate carriers, Charging Parties herein, who have been making such deliveries for the packers, were not, with the exception of Belford Trucking Company, signators to any Teamster Over-the-Road agreement, the packers under this clause would be forced to cease doing business with Frozen Food and the other interstate carriers. Indeed, immediately upon the signing of its contract containing this clause Agar Packing Company advised Watkins Motor Freight, which was not a party to any Teamster Over-the-Road agreement, that it could no longer use Watkins' services. And although Belford was party to a Teamster Over-the-Road agreement, the packers, in order to use their services, would have to drastically change their mode of operations. Instead of having deliveries by interstate carriers made directly to their customers and consignees in the Chicago area, the packers would have to terminate such deliveries at the Chicago city dock or at their own terminal facility, and from there make delivery to the customer's place of business with the packers' own local drivers, or with drivers employed by other signers of one of the Teamsters' Over-the-Road agreements. This change in the method of deliveries would result in a partial cessation of business relations with Frozen Food and the other interstate carriers. In the *Gallagher* case<sup>5</sup> the Board found a substantially similar provision to be an implied agreement proscribed by Section 8(e) of the Act. There the Board said:

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<sup>5</sup> *Highway Truck Drivers Local 107 (E. A. Gallagher & Sons)*, 131 NLRB 925, enf'd, 302 F. 2d 897 (C.A.D.C.). See also cases cited in footnote 6.

"... under the terms of this contract, nonunion operators utilized by Gallagher, could not deliver goods to consignees in Philadelphia area, but would have to bring their trucks directly to Gallagher's terminal. In order to effectuate local delivery, the steel would then either have to be transferred to other trucks manned by members of the Respondent, or the independent operators would have to hire Union members to drive their trucks. In either event, the contract would require a partial cessation of business between the independent owner-operator . . . and Gallagher.

*The subcontracting clause of the First Addendum reads as follows:*

"It is also agreed that all local overflow cartage shipments of meat and meat products originating with the employer in Chicago will be done by cartage companies which are signators to this agreement."

This clause permits subcontracting of "all local overflow cartage" in the Chicago area, but requires that it "be done by cartage companies which are signators to this agreement." The clause, however, precludes the packers from subcontracting the local overflow cartage to trucking companies which are not parties to the agreement with Local 710. The Respondent contends that the clause is not a "hot cargo" agreement within the meaning of Section 8(c) because its purpose is to preserve work for the employees in the bargaining unit by removing the incentive for subcontracting to contractors who because of their lower wages and labor standards could perform such work cheaper. We find no merit in this argument. On its face, the provision shows that it is intended to accomplish more than merely restricting subcontracting for the purpose of the preservation of jobs and job rights of the unit employees. It allows subcontracting but limits the trucking

companies with whom the employer can do business to those under contract with the Union.

We find, as did the Trial Examiner, that both of the above provisions of the First Addendum contravene Section 8(e).<sup>6</sup>

*Subcontracting under Article XII (1):* Contracts now in force between the packers (except for Swift & Co.) and Local 710 contain Article XII (1) which reads as follows:

Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago stockyards, whether to final destination or point of transfer, shall be delivered by the Company in their own equipment except when there is a lack of equipment at individual plants or branches, and then all effort will be made to contract a *cartage company who employs members of Local No. 710*. (Emphasis supplied)

This provision requires that the deliveries in the Chicago area be made by the employer in its own equipment and that in the event of a lack of equipment, "*all effort* be made to contract a cartage company who employs members of Local 710." Implementation of this clause would require a packing company that uses independent cartage companies to cease dealing with independents until it had attempted to find in the area a cartage company that employs members of Local 710, and, in the event, that such a company is available, not to use independents at all. The

<sup>6</sup> District No. 9, *International Association of Machinists (Greater St. Louis Automotive Trimmers, etc.)*, 134 NLRB 1363, enf'd (C.A.D.C.), 51 LRRM 2496; *Retail Clerks Union, Local 770 (The Frito Company, et al)*, 138 NLRB No. 27 where the Board found that by enforcing and giving effect to agreements whereby employers agreed to subcontract work only to employers under contract with contracting unions the parties violated Section 8(e). *Such agreement goes beyond protecting work of employees in the unit, and, at least by implication, is an agreement not to do business with employers who do not so qualify and are invalid as within the meaning of Section 8(e).*

practical effect would be virtually the same as if the clause had expressly prohibited subcontracting to any non-union employer. Accordingly, we find that Article XII (1) is an agreement prohibited by Section 8(e).<sup>7</sup>

*The New Addendum:* The first part of the New Addendum provides that

. . . all meat and meat products which originate with or are processed or sold by the employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the employer within the Chicago city limits by employees covered by this agreement.

The Respondent contends that this provision is not a "hot cargo" agreement proscribed by Section 8(e), but is a "conventional work protection" or "work assignment" clause, which defines the work that will be exclusively performed by the employees covered by the agreement, and that an attempt to secure such work by contractual preemption is a protected primary activity. The Respondent further contends that the purpose of the revised addendum is to preserve employment opportunities for the local

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<sup>7</sup> *Highway Truck Drivers, etc., Local 107 (E. A. Gallagher & Sons), supra*, where prior to leasing equipment with a driver the employer was required to "give preference" to employers having a contract with the Union. *District No. 9, International Association of Machinists (Greater St. Louis Automotive Trimmers), supra*, the clause required that "preference must be given to such shop or subcontractors approved or having contracts with [the Union]." On appeal from the Board's decision the Union argued that the clause was designed to limit the work to employers maintaining labor standards comparable with those required by the Union. The Court of Appeals for the District of Columbia rejected the argument stating that the "bare words" of the clause do not lend themselves to such an interpretation. Rather, they suggest a "concurrence" between the Union and the employer "to boycott another employer for reasons not strictly germane to the economic integrity of the principal unit work."

drivers employed by the packers in Chicago, and to recover jobs lost in consequence of the larger packers' policy of relocating their packing facilities outside the Chicago area and having their deliveries come in directly to customers in the Chicago area by over-the-road drivers working for the interstate motor carriers. We find no merit in this argument.

Although the revised Addendum no longer requires the deliveries of meat products originating with the Employer out-of-State into the Chicago area to be made only by carriers who are signators to a Teamsters' Over-the-Road agreement, its effect and inevitable consequences clearly contravenes the purpose of Section 8(e) of the Act. As did the First Addendum, it requires that all shipments of out-of-State meat products into the Chicago area terminate at the Chicago city dock or the packer's terminal facility. From there the delivery of such products to consignees and customers in the Chicago area would have to be made by the packer's own drivers represented by Local 710. The revised Addendum, therefore, does not cure the major defect of the First Addendum pursuant to which the packer would have been forced either to completely stop doing business with Frozen Food and the other interstate carriers, or to change the manner of its operations by curtailing the scope of such business with the interstate carriers by withdrawing from them the intra-city portion of the deliveries directly to customers and consignees in the Chicago area. We find that this was one of the Union's objects in attempting to force the packers to agree to the revised Addendum.

It is also clear that the work which the Union sought to secure for the employees in the bargaining unit was never customarily performed by such employees. While local deliveries of meat products *originating in the Chicago area* to customers in the area have been made by the employer's drivers represented by Local 710, the deliveries

of meat products *originating with the employer out-of-State* to its consignees in the Chicago area always have been performed by the over-the-road drivers working for Frozen Food and the other interstate carriers as a part of a single and continuous operation from points out-of-State to consignees in the Chicago area without any stopover at the Chicago city dock or the packer's terminal facility. Nor is there anything in the work assignment clause of the 1958-1961 Packing House Agreement to suggest that local deliveries of the employer's meat products originating out-of-State are covered by that clause.<sup>8</sup> As revised by the new addendum, the assignment clause, however, would cover *all* local deliveries of the employer's meat products in the Chicago area, that is those originating in the Chicago area, as well as those originating out-of-State.

As some of the packers have arrangements with Frozen Food and the other interstate carriers whereby the carriers are guaranteed so much tonnage a year, the acceptance of the Union's revised "work assignment" clause could result in a complete, or at least partial, disruption of the packers' business relations and/or loss of employment opportunities for the over-the-road drivers working for the interstate carriers. These relations date back to the year 1955 when the major packers began relocating their packing facilities outside the Chicago area. By the time the negotiations for a new contract began in April 1961 these relations had been firmly established. Ninety percent of Armour's, all of Wilson's, and a substantial

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<sup>8</sup> Article XII (1) of the 1958-1961 Packing House Agreement with Local 710, which has been included in the packing agreements in the Chicago area for about 20 years, defines the work of the employees in the bargaining unit as *deliveries* of "likestock, meat and meat products by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer." Under the Revised Addendum, on the other hand, "*all deliveries* to customers and consignees of the Employer *within the Chicago area* shall be made only by employees covered by this agreement." (Emphasis supplied)



portion of Swift's deliveries into the Chicago area were being made by self-employed truckers working for Frozen Food and the other interstate carriers. As far as the record shows, the Union interposed no objection to the decision of the major packers to initiate the relocation of their packing facilities. The decision was impelled by major changes in the raising and supply of livestock, the shift from rail to truck transportation, changes in marketing, and major population shifts. Nor did the Union raise any objection to the packers continuing to deliver their meat products originating out-of-State *directly* to consignees in the Chicago area by interstate carriers. While Article XII(1) in the Packing House agreement at all times required that local deliveries of meat products originating in the Chicago stockyards be made by the packer's drivers represented by Local 710, the agreement contained no restriction upon the manner in which deliveries of the employer's meat products originating out-of-State be made to consignees in the Chicago area.

We do not agree with the Respondent's contention that a union's efforts to secure by a contractual preemption work for the employees in the bargaining unit is necessarily protected primary activity. Nor can we agree with our colleagues that the contract clause itself would only incidentally affect other parties. In the instant case it is apparent that the union's claim to the disputed work is based upon its assertion of geographic jurisdiction within the Chicago area. As indicated above, however, delivery of meat products originating outside of this area has never been work covered by the Union's contract. Even if this work was performed by employees of the packers, rather than employees of other interstate carriers, such employees need not necessarily have been included in the unit represented by the Union. Under these circumstances we cannot agree with our dissenting colleagues that the assignment of this work to members of the Union's contractual



unit "is a mandatory subject of collective bargaining." While an employer is required to bargain about the terms and conditions of employment of a unit of employees, and this requirement may extend to work sub-contracted outside of the unit, a different issue is presented when an employer relocates part of his business to another location and sub-contracts work from *that location*. The new location may well entail a new and different unit. Reorganization of the Employer's business may mean a loss of jobs to employees in the preexisting unit, but this loss may not be compensated by infringement upon the rights of other employees in other units of the same or different employers. We do not purport to decide whether the interest of the packers "outweighs" the interest of the Union in this case. It is sufficient that the work sought by the Union in the first part of the New Addendum was not necessarily work within the scope of the existing Chicago unit.

As we have found one of the objects of the "work assignment" clause of the revised Addendum is to force or require the packers to assign to the employees in the bargaining unit work which they had never customarily performed before; and as compliance with the clause would necessarily result in the disruption of well established business relations between the packers and the interstate carriers, as well as the loss of employment for the over-the-road drivers of the interstate carriers, we find that the first clause of the revised Addendum is an agreement violative of Section 8(e) of the Act.<sup>9</sup>

*Subcontracting clause of the New Addendum* provides that in the event that the employer does not have sufficient equipment,

it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and

<sup>9</sup> *E. A. Gallagher & Sons, supra*; *Local 282, IBT (Precon Trucking Corp.)* 139 NLRB No. 92; *International Longshoremen's Association (The Board of Harbour Commissioners)*, 137 NLRB 1178.

other benefits as provided in this agreement for the making of such deliveries.

Unlike the subcontracting clause of the First Addendum and that in Article XII(1), it does not limit subcontracting to cartage companies under contract with Local 710. It permits subcontracting to *any* company "whose truck-drivers enjoy the same or better wages and benefits" as set forth in the contract.

The Respondent contends that the clause does not sanction a secondary boycott against nonunion employers, but that it was designed to protect work for the employees in the bargaining unit by removing the economic incentive for subcontracting work to cartage companies who because of the lower wages and labor standards could perform the work cheaper.

We see no merit in this argument. The main thrust of the clause is regulation and establishment of approved conditions for employees of another employer rather than with the definition and preservation, for the exclusive performance of employees in the bargaining unit, of work that traditionally has been performed in that unit.<sup>10</sup> The only "dispute" between the Union and the packers is that the packers are subcontracting their overflow cartage to local cartage companies whom the Union does not approve, and it is well settled that when a union's sole dispute is not with the contracting employer subject to its pressure, but with an employer with whom he is doing business, the conduct is secondary and within the proscription of the secondary boycott provision of the Act.<sup>11</sup>

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<sup>10</sup> Cf. *Ohio Valley Carpenters, etc. (Cardinal Industries, Inc.)*, 136 NLRB 977, where the Board found a clause violative of Section 8(c) on the ground that it regulated terms and conditions of employment of employees outside the bargaining unit.

<sup>11</sup> *N.L.R.B. v. Denver Building & Construction Trades Council*, 341 U.S. 675; *Local 1976 Carpenters v. N.L.R.B.*, 357 U.S. 93.

The record, moreover, is clear that in insisting upon acceptance of the revised subcontracting clause, Local 710 pursued proscribed objectives. At the bargaining session with the packers held on April 21, Secretary-Treasurer of Local 710, O'Brien, stated that Local 710 "specifically had to have some *language in the contract which protected the Union* in terms of deliveries and pickups in the Chicago area." (Emphasis supplied). Thus, it was the employment opportunities of members of Local 710, rather than the preservation of work for the employees in the bargaining unit that Local 710 sought to protect by imposing this restriction on subcontracting. The record further shows that the subcontracting clause of the First Addendum which limited subcontracting to cartage companies *under contract with Local 710*, had been withdrawn and replaced by the revised subcontracting clause of the New Addendum on June 5, but only *after* the unfair labor practice charges had been filed by the packers and in response to the pressure of the injunction proceeding. Local 710, thus obviously sought to make less objectionable, the clearly unlawful language of the original subcontracting clause while still pursuing the same objective.<sup>12</sup> Indeed, on June 6, or the next day, Local 710 agreed with the packers, except Swift & Co., to enter into the Packing House Agreement containing Article XII(1), carried over from the previous agreement, which limited subcontracting to cartage companies employing *members of Local 710*.

For the reasons set forth above, we reject the Respondent's contention that protection of work for employees in the bargaining unit was the primary objective of the revised subcontracting clause. We find that the Respondent, in seeking acceptance of that clause, had an objective of

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<sup>12</sup> See *Sheet Metal Workers (Burt Mfg. Co.)*, 293 F. 2d 141 (C.A.D.C.) enforcing 127 NLRB 1629 where the Court held that in determining an object of the second clause the Board can rely upon the events in connection with first proposal to "shed light on the true character of the objective" of the second clause.

forcing the packers to refrain from subcontracting the overflow cartage operations to cartage companies who do not qualify under the clause in order to protect working conditions of Respondent's members in the Chicago area, rather than the working conditions of employees in the Packers' unit, thereby bringing the clause within the purview of Section 8(e).<sup>13</sup> In so finding, we also disagree with the dissenting position of Member Brown that the Union's objective was merely to protect "the welfare of employees in the packer bargaining unit it represents." We do so, not only for the reasons set forth above, but because the clause, by its terms and as interpreted by the Union, limits the Employers' contractual authority with respect to nonunit work as well as unit work. It applies to local delivery of products from all locations of the packers' plants, whether in or out of the Chicago area. As indicated above, delivery of products originating in plants outside the Chicago area can hardly be considered within the scope of the Union's established unit.

We have found that the New Addendum, like the First Addendum and Article XII(1) of the Packing House Agreement now in force, would require Wilson, Armour, Swift and the other packers to cease doing business with the Frozen Food and other interstate carriers insofar as such carriers make direct deliveries to their customers or consignees in the Chicago area and make pickups from such customers to points outside the Chicago area. We have also found that both Addenda would require the packers to cease and refrain from doing business with the

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<sup>13</sup> See *Truck Drivers Local 413 (The Patton Warehouse, Inc.)*, 140 NLRB No. 136, where the clause required the employer "to refrain from using the services of any person who does not observe the wages . . . established by labor unions having jurisdiction over the type of services performed."

The Board found the clause unlawful under Section 8(e) on the ground that the clause limited the employer in the choice of the persons with whom he should be permitted to do business rather than to require him "to refrain from contracting out work previously performed in the bargaining unit."

cartage companies in the Chicago area whose employees are not members of Local 710 or whose labor policies are not approved by Local 710. As Section 8(e) prohibits agreements that directly or indirectly require an employer to cease or desist from doing business with other persons, we find, as did the Trial Examiner, that both Addenda and Article XII(1) constitute agreements proscribed by Section 8(e) of the Act.<sup>14</sup>

Since we have found that the first Addendum is an agreement proscribed by Section 8(e), which makes it an unfair labor practice to "enter into any contract, express or implied, whereby the employer agrees to cease doing business with another person," we find, as did the Trial Examiner, that by entering into contracts between June 1 and June 5, 1961, with the 17 packers, Local 710 violated Section 8(e) of the Act.<sup>15</sup> Although all the contracts entered into between June 1 and 5 were cancelled by the parties on June 6, the violation of the Act has not been thereby rendered moot.

Having found that both Addenda are proscribed by Section 8(e) of the Act in that each addendum would require the employers to cease doing business with other persons, we find, as did the Trial Examiner, that by calling the strike on June 1, 1961, to force and require Wilson, Armour, Swift and other packers to agree to the First Addendum, and by continuing the strike after June 5 to force or to require the above employers to agree to the New

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<sup>14</sup> *Highway Truck Drivers, etc. Local 107 (E. A. Gallagher & Sons)*, 131 NLRB 925, enf'd 302 F. 2d 897 (C.A.D.C.); *Amalgamated Lithographers, Local 78 (Miami Post Co.)*, 130 NLRB 968, enf'd 301 F. 2d 20 (CA 5); *District No. 9 IAM (Greater St. Louis Automotive Trimmers)*, 134 NLRB 1354, enf'd (C.A.D.C.) 51 LRRM 2496; *Truck Drivers Union Local 413 (The Patton Warehouse, Inc.)*, 140 NLRB 136.

<sup>15</sup> *Mary Feifer d/b/a American Feed Company*, 133 NLRB 214; *District No. 9 (Greater St. Louis Automotive Trimmers)*, *supra*.

Addendum, proposed by the Union on that date, the Respondent violated Section 8(b)(4)(i)(ii)(A) of the Act.<sup>16</sup>

Since a further object of the strike necessarily was to force the above-named employers to cease doing business with Frozen Food and the other interstate motor carriers, as well as with local cartage companies of whom the Union did not approve, we find that the Respondent also violated the secondary boycott provision of Paragraph (B) of Section 8(b)(4)(i)(ii) of the Act.<sup>17</sup>

As the First Addendum requires that out-of-State shipments of meat and meat products to customers and consignees in the Chicago area be done by interstate carriers, who were signators to the Central States or other over-the-road Teamster motor freight agreement, Frozen Food and the other interstate carriers would have to become parties to that agreement if they wished to continue to render services for the packers. Under the Over-the-Road Agreement Frozen Food and the other carriers would also have to recognize Central States Drivers Council and Local 710 as the bargaining representative of the self-employed truckers working for them, and the self-employed truckers would have to become members of the Union, if they wished to work for the interstate carriers.<sup>18</sup> Accordingly, we find

<sup>16</sup> *E. A. Gallagher & Sons, supra*; *Los Angeles Mailers Union (Hillbro Newspaper Printing Co.)*, 135 NLRB 1132, enf'd 311 F. 2d 121 (C.A.D.C.); *Local 282, IBT (Precon Trucking Co.)*, 139 NLRB 92.

<sup>17</sup> *E. A. Gallagher & Sons, supra*; *Los Angeles Mailers Union (Hillbro Newspaper Printing Co.)*, *supra*; *Local 282, IBT (Precon Trucking Co.)*, *supra*; *Amalgamated Lithographers of America (The Graphic Arts Employers Association)*, 130 NLRB 985, enf'd 309 F. 2d 31 (C.A. 9).

<sup>18</sup> In order to prove that one of the objects of the First Addendum was to force or require self-employed truckers to join the Union it is not necessary to show that the Union solicited their membership or made a demand upon the packers or interstate carriers that they join the Union. It is sufficient if it be shown that such a result would follow from the Respondent's conduct as a necessary and foreseeable result. *United Steelworkers Union, Local No. 4203 (Tennessee Coal and Iron)*, (C.A.D.C.) 294 F. 2d 256 enforcing as mod., 127 NLRB 823.

that the strike from June 1 until the First Addendum was withdrawn on June 5, was also for an object of forcing or requiring self-employed truckers to join the Union in violation of Section 8(b)(4)(i)(ii)(A) of the Act.

#### THE REMEDY

Having found that the Respondent Union has engaged in unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the First Addendum, the New Addendum and Article XII(1) are agreements prohibited by Section 8(e) of the Act, we shall make the provisions of our cease and desist order broad enough to enjoin the Respondent Union from entering into any agreement prohibited by Section 8(e) of the Act with the employers involved.

Because the record shows that the Respondent Union in addition to its contracts with the three major packers (Wilson, Armour and Swift) also has contracts with the 17 other packers, that on June 1 the Union, in support of its demands, struck the whole packing industry in Chicago, and as the Union's past conduct indicates that unless enjoined the commission of further unlawful acts by the Union may be anticipated, we shall order the Respondent to cease and desist from engaging in the conduct found unlawful against the named employers as well as against "any other employer."<sup>19</sup>

#### CONCLUSIONS OF LAW

1. The Union is a labor organization within the meaning of Section 2(5) of the Act.

2. Swift Plant, Swift Sales, Armour, Wilson, Frozen Food Express, Belford Trucking Company, Inc., Refriger-

<sup>19</sup> *Local 294 Teamsters, (Van Transport Lines)*, 131 NLRB 242, enf'd 298 F. 2d 105 (CA 2).



ated Transport Co., Inc., Trans-Cold Express, Inc., Watkins Motor Lines, Inc., and Zero Refrigerated Lines are engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. The First Addendum and the New Addendum proposed by the Union on June 5 are agreements which are prohibited by Section 8(e) of the Act.

4. The Union by striking on June 1 with an object of forcing or requiring Swift Plant, Swift Sales, Armour, Wilson and various other packers to agree to the First Addendum, and with a further object of forcing or requiring the self-employed operators of trucks delivering for Frozen Food Express, Belford Trucking Company, Inc., Refrigerated Transport Co., Inc., Trans-Cold Express, Inc., Watkins Motor Lines, Inc., and Zero Refrigerated Lines to join the Union, violated Section 8(b)(4)(i)(ii)(A) and (B) of the Act.

5. The Union by entering into contracts with the 17 packers, between June 1 and June 5, which included the First Addendum, violated Section 8(e) of the Act.

6. The Union, by continuing the strike after June 5 with an object of forcing or requiring Swift Plant, Swift Sales, Armour, and Wilson to agree to include in a contract the Addendum proposed by the Union on that date, violated Section 8(b)(4)(i)(ii)(A) and (B) of the Act.

7. The Union, by entering into agreements and contracts on and after June 6 with Swift Plant, Swift Sales, Armour, and Wilson, and other packers, which incorporated a conditional agreement to bargain about the New Addendum proposed by the Union on June 5, and except for the agreements with Swift Plant and Swift Sales, included Article XII(1), violated Section 8(e) of the Act.



## ORDER

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Meat and Highway Drivers, Dockmen, Helpers and Miscellaneous Truck Terminal Employees, Local Union No. 710, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Taking any action an object of which is to force or require Wilson & Co., Inc., Armour and Company, Swift & Co., Meat Packing Plant, Swift & Co., Sales Units, and other employers to agree to the Addendum, incorporated as an Exhibit in their agreements and contracts with the Union entered into on and after June 6, 1961 and providing as follows:

The Employer agrees that all meat and meat products which originate with or are processed or sold by the Employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer by employees covered by the agreement. It is specifically understood that all deliveries to customers or consignees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement.

In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the Chicago city limits, it may contract with any cartage company whose

truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

This addendum shall not in any way be construed to diminish the description of the work covered by this agreement as set forth in any provision of this agreement.

(b) Maintaining, enforcing, or giving effect to the agreements and contracts entered into on and after June 6, 1961, by and between the Union and Wilson & Co., Inc., Armour and Company, and other employers, insofar as said agreements and contracts provide:

Article XII (1). Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equipment, except when there is a lack of equipment at individual plants or branches, and then all effort will be made to contract a cartage company who employs members of Local No. 710. Employer agrees to do all possible to use own equipment at all times.

(c) Entering into, actively maintaining, giving effect to, or enforcing any other contract or agreement, express or implied, whereby the employers named in (a) above, or any other employers, cease or refrain, or agree to cease or refrain, from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or from doing business with any other person.

(d) Engaging in, or inducing or encouraging individuals employed by the employers named in (a) above, or any other employers, to engage in a strike, or threatening, coercing, or restraining the aforesaid employers by picketing or otherwise, where in either case an object thereof is to force or require the aforesaid employers to cease doing

business with Frozen Food Express, Belford Trucking Company, Inc., Refrigerated Transport Co., Inc., Trans-Cold Express, Inc., Watkins Motor Lines, Inc., Zero Refrigerated Lines, or with any other similarly situated carriers.

(e) Engaging in, or inducing or encouraging individuals employed by the employers named in (a) above, or any other employers, to engage in a strike or threatening, coercing, or restraining the aforesaid employers by picketing or otherwise, where in either case an object thereof is to force or require the self-employed operators of trucks delivering for Frozen Food Express, Belford Trucking Company, Inc., Refrigerated Transport Co., Inc., Trans-Cold Express, Inc., Watkins Motor Lines, Inc., Zero Refrigerated Lines, or any other similarly situated carriers, to join Respondent Union or any other labor organization.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post in conspicuous places in the Union's business offices, meeting halls, and places where notices to members are customarily posted, copies of the notice attached hereto marked "Appendix A."<sup>20</sup> Copies of said notice to be furnished by the Regional Director for the Thirteenth Region, shall, after being duly signed by an official representative of the Union, be posted by the Union immediately upon receipt thereof and be maintained by it for 60 consecutive days thereafter. Reasonable steps shall be taken by the Union to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for the Thirteenth Region signed copies of the aforementioned notice for posting by Swift Plant, Swift Sales, Armour, and Wilson; and, all other employers party to an agreement with the Union

<sup>20</sup> In the event that this Order is enforced by a decree of a United States Court of Appeals, the notice shall be amended by substituting for the words "Pursuant to a Decision and Order" the words, "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

which includes the provision set forth in 1(a), above; and, Frozen Food Express, Belford Trucking Company, Inc., Refrigerated Transport Co., Inc., Trans-Cold Express, Inc., Watkins Motor Lines, Inc., and Zero Refrigerated Lines, in places where notices to employees are customarily posted. Copies of said notice to be furnished by the Regional Director shall, after being signed by the Union, as indicated, be forthwith returned to the Regional Director for disposition by him.

(c) Notify the Regional Director for the Thirteenth Region in writing, within 10 days from the date of this Order of the action taken by the Union to comply therewith.

Dated, Washington, D. C., August 6, 1963

PHILIP RAY RODGERS,

Member

BOYD LEEDOM,

Member

JOHN H. FANNING,

Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

FRANK W. McCULLOCH, CHAIRMAN, dissenting in part:

My disagreement with the members of the majority stems from their tacit assumption that the efforts of the Union to bargain with the packers about protection of unit work necessarily violates Section 8(e), if a consequence of such a work protection clause is to impair in any degree the existing relationship between the packers and their present subcontractors.

It is my position, based on the facts in this case, that the Union may insist on bargaining with the packers with respect to contractual provisions which are designed to retain, reclaim, or obtain work of the type now being performed by unit members, despite the possibility that a successful insistence in that respect might entail changes

in the present relationship between the packers and the independent haulers who are making local deliveries as the final step in their interstate hauling.

The question whether Section 8(e) must be interpreted as barring all agreements prohibiting the subcontracting of work has been definitively answered in the negative.<sup>21</sup> Whether a particular work protection clause is violative of Section 8(e) because it may affect present relationships between the employer and subcontractors presently doing such work, must depend, as the Board has unanimously agreed, upon "the language used, the intent of the parties and the scope of the [subcontracting] restriction . . . ." *Milk Drivers Local 546, supra*. The matter may not be disposed of by an inflexible rule invalidating any contract clause whose purpose is to preserve and protect unit work merely because it incidentally affects other parties.

In this frame of reference, prior unanimous Board holdings (see fn. 21) dictate that any proposal demonstrably directed to the purpose of requiring the packers in this case to subcontract local delivery work only to contractors who are under contract with Local 710, or with other affiliate or constituent units of the Teamsters goes beyond the legitimate protection of unit work and is outside the scope of permissible bargaining. In this category are Article XII (1), Article XXXIII, and the First Addendum.

Moreover, in the circumstances of the instant case, and contrary to the ably expressed views of my colleague, Member Brown, I agree with the majority in finding likewise impermissible the provision of the New Addendum limiting subcontracting of local deliveries (where there is

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<sup>21</sup> *Milk Drivers, etc. Local 546, Teamsters (Minnesota Milk Company)*, 133 NLRB 1314, *enf'd* F. 2d (C.A. 8), 52 LRRM 2589; *District No. 9, IAM (Greater St. Louis Automotive Trimmers)*, 134 NLRB 1354; *enf'd* F. 2d (C.A.D.C.), 51 LRRM 2496; *Ohio Valley Carpenters District Council (Cardinal Industries, Inc.)*, 136 NLRB 977, 985-6; *Local 282, Teamsters, (Precon Trucking)*, 139 NLRB No. 92, I.R. p. 12 *et seq.* Cox, *Law and the National Labor Policy*, 34.

insufficient equipment) to companies "whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement . . ." Against the background of the provisions which preceded this latest proposal and in the total context of Local 710's objectives, I agree that the Union in this provision was merely resorting to an alternative approach or formulation to achieve the same goal, namely, limiting overflow work to employers having contracts with Local 710 or co-affiliates. Furthermore, the fact is that the Union was concerned here not with work which the employees it represented were doing or could do, but rather with work which, by definition, they would be unable to do and which would have to be subcontracted out in any event. It follows that the thrust of the provision is not primarily directed at protecting the terms and conditions of employment of the represented employees, but is directed rather toward the objective of dictating the terms and conditions upon which other employers will be permitted to do business. The Board has already indicated its view that such dictation is proscribed. *The Patton Warehouse, Inc.*, 140 NLRB No. 136.

This is not to say that there may not be other circumstances in which contract provisions relating to wages or working conditions under which subcontracting may be allowed are so clearly and directly related to the protection of the unit employees' work that they are permissible under the statute, as being "strictly germane to the economic integrity of the principal work unit."<sup>22</sup> In my view, however, such circumstances have not been shown to be present here.

To the extent noted above, I agree with my colleagues of the majority. I would find, however, in disagreement with them, that the first part of the New Addendum is

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<sup>22</sup> *District 9, IAM v. N.L.R.B.*, F. 2d (C.A.D.C.) 51 LRRM 2496, 2498. See also *Retail Clerks Local 770 v. N.L.R.B.*, 296 F. 2d 368, 373 (C.A.D.C.).

legal. It provides that deliveries of meat and meat products that originate with or are processed or sold by a packer for consignment or sale within Chicago must be delivered from a facility in Chicago by employees covered by the agreement. Its effect is to prohibit all subcontracting of delivery work to consignees within the city limits regardless of the point of origin of the shipment. Because the effectuation of this provision would require the employers to break up their deliveries to consignees in Chicago into an interstate portion (from the out-of-state plant to the city dock or terminal), and an intra-city portion (from that point to the local consignee), the majority would sweep out the entire provision as an attempt to force the employers to cease doing business with the interstate carriers in the manner in which they are presently handling their deliveries.

I do not agree. I would instead find it to be a provision the primary objective of which was the protection of legitimate interests of employees within the contract unit.

It is worthwhile at this point to sketch in briefly the factual background which in the 1961 negotiations occasioned the Union's insistence that the employment losses it had already suffered be reversed. The facts are not substantially disputed, and whatever disagreement there may be as to when such losses began, is not important. It is moreover, necessary to make clear what work the Union considered as rightfully belonging to the employees it represented, in view of the statement in the majority opinion that local deliveries of shipments originating out-of-State had not customarily been performed by the packers' local drivers and had not been provided for in the work assignment clause of the 1958-61 agreement.

For at least 20 years, meat packers in Chicago have agreed with Local 710 that deliveries of meat products by truck within the Chicago area would be made directly



by the packers, using their own equipment driven by employees represented by Local 710. During most of this period, deliveries to customers in the Chicago area originated from the packers' plant in Chicago. Toward the end of the last decade, extensive changes in the distribution of meat products were effected as the major packers moved much of their slaughtering and processing operations outside of Chicago. The relocation of Swift, Armour, and Wilson, the three major packers, caused a sharp reduction in employment both of inside plant workers and of local drivers. Of about 330 truckdrivers employed by Swift, Armour, and Wilson at the beginning of the prior contract term in May 1958, only 80 were still employed 3 years later when negotiations began for a new agreement. Drivers employed by the packers continued to make deliveries from the remaining plant facilities in Chicago to customers within a 50 mile radius, but deliveries to customers within the same area were increasingly being made by over-the-road drivers whose runs originated from the packers' facilities outside the Chicago area. It was to the problem of recovering the jobs lost by the local drivers in the Chicago area and retaining those still performed there that the Union addressed itself in the 1961 negotiations.

The proposal that the Union put forward in the first part of the New Addendum is directed toward a readjustment of its contract unit work made necessary by the changed pattern of meat distribution to consignees in the Chicago area.

The majority opinion states that the work assignment clause of the 1958-61 agreement did not cover local deliveries of shipments originating out-of-State, and that the New Addendum attempted to broaden the scope of the clause so as to cover this type of local delivery. On that premise, the majority argues that deliveries to local con-



signees as the last leg of an interstate haul have never been considered to be work within Local 710's unit.

I find the argument untenable. Neither the former work assignment clause nor the New Addendum distinguishes between local deliveries on the basis of where they may in fact have originated. Article XII of the expired agreement assigned to employees represented by Local 710 delivery work "to a distance not exceeding 50 miles from the Chicago Stock Yards . . ." The New Addendum would assign to unit employees deliveries to "customers or consignees located within the city limits of Chicago . . ." The language of neither provision supports the majority position that the Union had never previously claimed as its work those deliveries within the Chicago area which originated outside the State. On the contrary, the Union under the contract had at all times claimed and been assigned delivery work to consignees within 50 miles of the Chicago Stock Yards.

The majority is, of course, correct in stating that the unit members had in fact never customarily performed those local deliveries which originated outside of Chicago, but this statement is meaningless. They had not done so because there had been no occasion for them to do so. When the packing plants were in Chicago, Local 710's members made all deliveries to local consignees; when the plants in Chicago were closed down and their activities transferred elsewhere, the packers immediately turned over to independent trucking contractors the work of delivering to consignees in the Chicago area, as part of their interstate haul.

The majority seems to argue that Local 710 acquiesced in this new arrangement, and cannot therefore be heard to object now. But an appropriate time to stanch a continuing loss of unit work is when a new contract is to be

negotiated.<sup>23</sup> It is then that the problem can be viewed as a whole in a context of mutual give and take along with other provisions relating to conditions of employment. Moreover, in view of the unsettled state of the law at the time with respect to an employer's duty to bargain over his decision to relocate a facility for economic reasons,<sup>24</sup> it would have taken remarkable clairvoyance for the Union between 1958 and 1961 to claim that the employers had violated Section 8(a)(5) in failing to discuss with it their relocation and altered delivery plans.

Deliveries to consignees in the Chicago area, regardless of origin, can justifiably be considered to be work of the employees within Local 710's unit. Even if it had never been customarily performed by unit members when it was part of an interstate haul, it is nevertheless so closely allied—and is in part identical—to the local deliveries previously recognized for almost 20 years to be unit work as to make bargaining about it mandatory. To hold otherwise is to say that a union may not seek to bargain with an employer either about the quantum of work, or the qualifications of its members to perform closely related work, whenever technological changes or mere changes in methods of distribution are to be effected.

The Packers contend that such deliveries are now uneconomical or inefficient because they may require transshipments at their Chicago docks, but it is not for the Board

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<sup>23</sup> "Union attitudes towards subcontracting, in general, tend to stiffen when employment declines and when contracting out removed work that customarily 'belonged' in the bargaining unit. Not only are members' jobs at stake, but concern over union jurisdiction and the possibility that subcontracting may be used to evade or dilute the terms of the collective bargaining agreement are often present." *Bulletin No. 1304, U.S. Department of Labor, Subcontracting Clauses in Major Collective Bargaining Agreements*, 1961, page 1.

<sup>24</sup> *Fiberboard Paper Products Corporation*, 130 NLRB 1558; 138 NLRB No. 67, enf'd (C.A. D.C.) 52 LRRM 2666; *Town & Country Manufacturing Company, Inc.*, 136 NLRB 1022.

to decide that their interest in economy and efficiency outweighs the interest of the Union in reclaiming the work previously performed by 250 truckdrivers. These are matters to be resolved by the parties through collective bargaining.

I am not ready to deny to a bargaining representative an opportunity to maximize employment for the employees in its unit even though it may result in changing some recent business relationships which have brought about a diminution of unit work. Section 8(e) in my view was not intended to have so broad a reach.

Dated, Washington, D. C., August 6, 1963

FRANK W. McCULLOCH,  
Chairman

NATIONAL LABOR RELATIONS BOARD

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Member Brown, dissenting in part:

I share the Chairman's views respecting the first part of the New Addendum and therefore join him in dissent on that point. Unlike the Chairman, however, my disagreement with my other colleagues extends as well to the second or subcontracting portion of that Addendum, for I do not believe that this record establishes the invalidity of such provision.

There being no question concerning the lawfulness of an employer's contractual commitment not to remove, by subcontract, any work from employees in a contract unit,<sup>25</sup> I consider it lawful for parties to accommodate employer needs for operational flexibility with the "legitimate at-

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<sup>25</sup> *Milk Drivers' Union, Local 753, (Pure Milk Association)*, 141 NLRB No. 103, p. 5; *District 9, IAM v. N.L.R.B. (Greater St. Louis Automotive Trimmers)*, 315 F. 2d 33 (C.A.D.C.) enfg. 134 NLRB 1363; and *Bakery Wagon Drivers v. N.L.R.B.*, 53 LRRM 2286, 2288 (C.A.D.C.), May 23, 1963, enfg. 137 NLRB No. 98.

tempts by the union to protect and preserve the work and standards it has bargained for."<sup>26</sup> This accommodation, which my colleagues find to be unlawful in this case, appears in the following portion of the New Addendum:

In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the Chicago city limits, it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

In thus limiting the class of persons to whom the assigned work of the contract unit may be subcontracted, the Union's purpose, so far as this record reveals, is not to limit the employer in the persons with whom he does business in order to further a dispute at another employer's establishment, or to protest objectionable conditions at another employer's establishment, or to improve the conditions of the employees of another employer. Rather, the Union's objective was to accommodate the business needs of the employer while at the same time protecting the welfare of employees in the packer bargaining unit it represents.

Mindful of the Union's aforementioned purpose, the second part of the New Addendum recognizes realistically that situations sometimes do arise when the packer may have drivers of his own available but insufficient equipment to carry out his operations. In such situations, the Addendum would permit the packer to contract with a cartage company; but only when the cartage company maintains the same or better labor standards. The Addendum thus discourages the packer's use of a cartage company as

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<sup>26</sup> *Retail Clerks Union Local 770 v. N.L.R.B. (Food Employers' Council)*, 296 F. 2d 368 (C.A.D.C.).

a device for undermining the work<sup>27</sup> and standards which the packer had agreed to maintain for his employees. Accordingly, the New Addendum serves both the packer's interest in flexibility and the Union's interest in preventing that flexibility from undercutting the job security of the packer's own employees through subcontracting their work for performance under substandard conditions.

Treating this matter of subcontracting clauses, the Court of Appeals for the District of Columbia cautioned the Board in *Retail Clerks Union Local 770 v. N.L.R.B. (Food Employers' Council)*, *supra*, that the subject is not to be disposed of by "blanket pronouncements." The Court continued (*id.* at 373-374):

These clauses take many forms. Some prohibit subcontracting under any circumstances; some prohibit it unless there is sufficient work in the shop to keep shop employees busy; some prohibit it except where the subcontractor maintains a wage scale and working conditions commensurate with those of the employer who is party to the collective agreement. On the face of it, these provisions would seem to be legitimate attempts by the union to protect and preserve the work and standards it has bargained for. In the latter supposition, for example, the Union may be attempting to remove the economic incentive for contracting out, and thus to preserve the work for the contracting employees. [Emphasis supplied.]

The Board has correspondingly recognized that each such subcontracting clause must be examined in its own context, with due regard for the intent of the parties, the scope of the restriction, and the particular language used. *Milk Drivers Union No. 546 (Minnesota Milk Co.)*, 133 NLRB 1314, 1317, *enfd.* 314 F. 2d 761 (C.A. 8).

<sup>27</sup> See, in this connection, the Supreme Court's discussion of this point in the *Oliver* case, footnote 33, *infra*.

Directing attention to the agreement presented in the instant case, it may not be gainsaid that the New Addendum does limit, to some extent, the class of persons with whom the Employer may do business. Read literally, Section 8(e) would appear to prohibit all agreements placing restrictions on the subcontracting out of an employer's work; for in a sense all such agreements do place limitations on the employer's ability to do business with others and thereby arguably fall within the statutory proscription. However, it is equally clear that a literal reading of 8(e) would result in expanding the scope of that section to cover matters far removed from Congress' overriding interest in banning "hot cargo" clauses. The essential distinction between such clauses and those which restrict subcontracting in order to protect the employment of employees in the bargaining unit was pointed out by one eminent authority thusly:<sup>28</sup>

The restriction upon subcontracting seeks to protect the wages and job opportunities of the employees covered by the contract, by forbidding the primary employer to have work which his employees might do, performed outside his own shop [is] *something quite different in both purpose and effect* from arranging to have secondary employers boycott nonunion firms or specified employers or groups of employers because their products or labor policies are objectionable to the union. [Emphasis supplied.]

Given this fundamental distinction, it is further observed that neither the debates nor other legislative history concerning the enactment of Section 8(e) contain any persuasive indication that the Congress intended to prohibit the conventional restrictions on subcontracting which are de-

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<sup>28</sup> Cox, *Law and the National Labor Policy* 34 (1960). See, also, Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 1086, 1118-1119 (1960).

signed to preserve the contract work of the employees in the bargaining unit.<sup>29</sup>

The distinction between lawful subcontracting clauses and unlawful 8(e) clauses evokes the same considerations which apply in the delineating lawful primary strikes from unlawful secondary boycotts under Section 8(b)(4)(B) of the Act. With respect to the primary strike-secondary boycott dichotomy, the Supreme Court has furnished us guidance, namely, while incidental effects on secondary employers attend practically all primary action, such side effects may not be cast as the predicate for subverting the essential character of a primary dispute between an employer and his employees concerning their own terms and conditions of employment. To hold otherwise and to read Section 8(b)(4)(B) literally "would," the Supreme Court stated, "ban most strikes historically considered to be lawful, so-called primary activity."<sup>30</sup> These considerations are in my opinion, equally pertinent to the instant case. Since the plain object of the disputed Addendum is to accommodate employer needs and yet prevent erosion of the employees' contract work, I am not persuaded that the incidental effect of that Addendum is sufficient to bring it within the proscription of Section 8(e) of the Act.<sup>31</sup>

<sup>29</sup> See, 71 Yale L. J. 158, 170; 38 N.Y.U.L. Rev. 96, 113-114; 45 Cornell L. Q. 724, 748-750; Cox, *The Law and the National Labor Policy* 35 (1960); and Powell, *The Impact of Section 8(e) on Subcontracting Clauses in Collective Bargaining Agreements*, Symposium on Labor-Management Reporting and Disclosure Act of 1959, pp. 897-901.

<sup>30</sup> *Local 761, IUE (General Electric), v. N.L.R.B.*, 366 U.S. 667, 672.

<sup>31</sup> See Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 1086, 1119.

Also, compare this Addendum with a clause recently held unlawful in *Truck Drivers Union Local No. 413 (The Patton Warehouse, Inc.)*, 140 NLRB No. 136, p. 14, which clause obligated the employer "to refrain from using the services of any person who does not observe the wages, hours, and conditions of employment established by labor unions having jurisdiction over the type of services performed." If, for example, a trucking company does not service its own equipment but has such maintenance done by another employer,



Indeed, as noted previously, my colleagues would agree that a no-subcontracting agreement to preserve the work of the bargaining unit employees is lawful even though it absolutely precludes subcontracting of the work to other employers. Reason would dictate a similar result here in view of the similar object of the clause under consideration and where incidental effects are even less restrictive.<sup>32</sup> Accordingly, I would dismiss the allegations of the complaint respecting both parts of the New Addendum.

Dated, Washington, D. C. Aug. 6, 1963.

GERALD A. BROWN, *Member*  
NATIONAL LABOR RELATIONS BOARD

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this *Patton* clause would confine the class of qualifying maintenance employers to those who observe the wage and other employment standards established by unions having jurisdiction over maintenance work; this restriction on doing business with maintenance employers would apply even though the employees of the trucking company neither perform nor have any interest in performing maintenance operations. The clause in *Patton* thus sought much more than "to govern only the relations between the [trucking] company and its employees" (*Minnesota Milk Company*, 133 NLRB 1314, 1316). The new Addendum in the instant case is plainly distinguishable for it does not evince any purpose which does not bear directly and intimately on preserving to the packer's own employees the work otherwise exclusively assigned to them in their contract.

<sup>32</sup> Cf. *Local 24, Teamsters Union v. Oliver*, 358 U.S. 283. In *Oliver*, as a result of multiemployer and multistate collective bargaining, an agreement was reached between a Drivers Council and motor carriers. Article XXXII of the agreement prescribed terms and conditions which regulated the minimum rental and other terms of lease when a motor vehicle is leased to a carrier by an owner who drives his vehicle in the carrier's service. In a State anti-trust action, the Union defended the Article "as necessary to prevent undermining of the negotiated drivers' wage scale said to result from a practice of carriers of leasing a vehicle from an owner-driver at a rental which returned to the owner-driver less than his actual costs of operation, so that the driver's wage received by him, although nominally the negotiated wage, was actually a wage reduced by the excess of his operating expenses over the rental he received." *Id.* at 289. The Supreme Court sustained the validity of the agreement, observing that the agreement's objective was (1) to maintain the "basic wage structure established by the collective bargaining contract" from undermining by owner-operators who would drive for less than what it cost the carrier to pay its own employees, and (2) to prevent "progressive curtailment of jobs through withdrawal of more and more carrier-owned vehicles from service." [Emphasis Supplied] *Id.* at 294.



## APPENDIX A

## NOTICE

TO ALL OUR MEMBERS AND TO ALL EMPLOYEES OF WILSON & Co., ARMOUR AND COMPANY, SWIFT AND Co., MEAT PACKING PLANT, SWIFT AND Co., SALES UNITS AND OTHER EMPLOYERS

## PURSUANT TO

## A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby give notice that:

WE WILL NOT take any action an object of which is to force or require WILSON & Co., INC., ARMOUR AND COMPANY, SWIFT & Co., MEAT PACKING PLANT, SWIFT & Co., SALES UNITS, and various other employers to agree to the Addendum, incorporated as an Exhibit in their agreements and contracts with the undersigned Union entered into on and after June 6, 1961 and providing as follows:

The Employer agrees that all meat and meat products which originate with or are processed or sold by the Employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer by employees covered by the agreement. It is specifically understood that all deliveries to customers or consignees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement.

In the event that the Employer does not have sufficient equipment at any given time to deliver his then cur-

rent sales or consignments within the Chicago city limits, it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

This addendum shall not in any way be construed to diminish the description of the work covered by this agreement as set forth in any provision of this agreement.

WE WILL NOT maintain, give effect to, or enforce the agreements and contracts entered into by the aforementioned employers and the undersigned union on and after June 6, 1961, insofar as said agreements and contracts provide that:

Article XII (1). Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equipment, except when there is a lack of equipment at individual plants or branches, and then all effort will be made to contract a cartage company who employs members of Local No. 710. Employer agrees to do all possible to use own equipment at all times.

WE WILL NOT enter into any contract or agreement, express or implied, with WILSON & CO., INC., ARMOUR AND COMPANY; SWIFT & COMPANY, MEAT PACKING PLANT; SWIFT & COMPANY, SALES UNITS; or any other employer, whereby such employer ceases, or refrains, or agrees to cease or refrain from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or from doing business with any other person.

WE WILL NOT engage in, or induce or encourage employees of the employers named above, to engage in a

strike, or threaten, coerce, or restrain the aforesaid employers by picketing or otherwise, where in either case an object thereof is to force or require the aforesaid employers to cease doing business with Frozen Food Express, Belford Trucking Company, Inc., Refrigerated Transport Co., Inc., Trans-Cold Express, Inc., Watkins Motor Lines, Inc., Zero Refrigerated Lines, or with any other similarly situated carriers, or to force or require the self-employed operators of trucks delivering for Frozen Food Express, Belford Trucking Company, Inc., Refrigerated Transport Co., Inc., Trans-Cold Express, Inc., Watkins Motor Lines, Inc., Zero Refrigerated Lines, or any other similarly situated carriers, to join Respondent Union, or any other labor organization.

MEAT AND HIGHWAY DRIVERS, DOCKMEN,  
HELPERS AND MISCELLANEOUS TRUCK  
TERMINAL EMPLOYEES, LOCAL UNION  
No. 710, INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSE-  
MEN AND HELPERS OF AMERICA  
(Labor Organization)

Dated .....By .....  
(Representative) (Title)

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This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any material material.

Employees may communicate directly with the Board's Regional Office, Midland Building, 176 West Adams Street, Chicago 3, Illinois (Tel. No. CEntrol 6-9660) if they have any question concerning this Notice or compliance with its provisions.

# EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRTEENTH REGION

MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND  
MISCELLANEOUS TRUCK TERMINAL EMPLOYEES, LOCAL  
UNION No. 710, INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF  
AMERICA, *Respondent*

and

WILSON & COMPANY, INC.,	Case No. 13-CC-260-3
ARMOUR AND COMPANY	Case No. 13-CC-260-4
SWIFT & COMPANY,	
MEAT PACKING PLANT	Case No. 13-CC-260-5
SWIFT & COMPANY, SALES UNITS,	Case No. 13-CC-260-6

and

MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND  
MISCELLANEOUS TRUCK TERMINAL EMPLOYEES, LOCAL  
UNION No. 710, INTERNATIONAL BROTHERHOOD OF TEAM-  
STERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF  
AMERICA,

and

FROZEN FOOD EXPRESS,	Case No. 13-CC-265
BELFORD TRUCKING COMPANY, INC.	13-CE-6
REFRIGERATED TRANSPORT CO., INC.	
TRANS-COLD EXPRESS, INC.	
WATKINS MOTOR LINES, INC.	
ZERO REFRIGERATED LINES.	

4

## PROCEEDINGS

TRIAL EXAMINER DORSEY: The hearing will be in order.  
This is a formal hearing before the National Labor Re-  
lations Board in the matter of Meat and Highway Drivers,  
Dockmen, Helpers and Miscellaneous Truck Terminal Em-

ployees, Local Union No. 710, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Respondent; and Wilson & Co., Inc., Case No. 13-CC-260-3; Armour and Company, Case No. 13-CC-260-4; Swift & Company, Meat Packing Plant, Case No. 13-CC-260-5; Swift & Company, Sales Units, Case No. 13-CC-260-6; Meat and Highway Drivers, Dockinen and Helpers and Miscellaneous Truck Terminal Employees, Local Union No. 710, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; and Frozen Food Express, Case Nos. 13-CC-265 and 13-CE-6, Belford Trucking Company, Inc.; Refrigerated Transport Co., Inc.; Trans-Cold Express, Inc.; Watkins Motor Lines, Inc. and Zero Refrigerated Lines.

The Trial Examiner conducting this hearing is John H. Dorsey.

Will Counsel and other representatives for the parties please state their appearances for the record?

Mr. Myatt: Counsel for General Counsel, Gordon J. Myatt, and Lawrence D. Ehrlich.

Trial Examiner: Other appearances, please.

5 Mr. Bussman: Counsel for Swift & Company, Meat Packing Plant, and Swift & Company, Sales Units, Donald H. Bussman.

Mr. Isaacson: Armour and Company, Kaye, Scholer, Fierman, Hays and Handler, by William J. Isaacson; and also Norbert E. Anderson.

Mr. Ryza: Frozen Food Express, Belford Trucking Company, Inc., Refrigerated Transport Co., Inc. Trans-Cold Express, Inc., Watkins Motor Lines, Inc., Zero Refrigerated Lines; Pope, Ballard, Driell, Kennedy, Shepard and Fowle, by W. S. Ryza and E. B. Miller.

Mr. Asher: For the Respondent, Asher, Gubbins and Segall, by Lester Asher and Melvin L. Rosenbloom; and Jaffee and Dunau by Bernard Dunau.

\* \* \* \* \*

8 (The documents above-referred to, heretofore marked General Counsel's Exhibits Nos. 1-A through 1-W, were received in evidence.)

\* \* \* \* \*

9 Mr. Myatt: Yes, Mr. Examiner. Counsel for General Counsel would like, at this time, to make an oral motion for leave to amend the complaint number or consolidated complaint, 13-CC-260-3 through 6, specifically Paragraph 6-C, which begins: On or about June 5, 1961, the Union modified its proposed Addendum 20 agreement to read as follows: Counsel for General Counsel would like to include, Union modified its proposed addendum to agreement and Article 33 to read as follows, and add the modified version of Article 33.

Now, this was supplied by Counsel for the Union in my office as the latest revision of the Article 33, and it adds nothing to the complaint or comes as any new material, but simply as a factual matter brings before this hearing all of the terms which General Counsel says that the Union was asking for, and I am prepared at this point to read the modified version of Article 33 as supplied to me, and I will provide copies in order that the Examiner may have the copy for his own information.

Trial Examiner: Any objections to that motion, gentlemen? Hearing none, the motion is granted. Proceed.

Mr. Myatt: Article 33, as modified on or about June 5, reads as follows: Livestock, meat and meat products for delivery by truck to a distance not exceeding fifty miles from the Chicago stock yards, whether to a final distribution or point of transfer shall be delivered by the  
10 company in their own equipment, except where there is a lack of equipment at individual plants or branches—strike that at individual plants or branches, and then a cartage company whose truck drivers enjoy the same or greater privileges—

Mr. Asher: Wages.

Mr. Myatt: Same or greater wages, thank you, and other benefits as provided in this agreement will be used.

Employer agrees to do all possible to use its own equipment at all times.

Trial Examiner: Now, gentlemen, so there is no confusion or no chance of error, in the transcription of that statement, I would suggest, Counsel, that you reduce it to written form and that we make it part of the formal papers next in line to be Exhibit 1-X.

\* \* \* \* \*

11 (The document above-referred to, heretofore marked General Counsel's Exhibit No. 1-X, was received in evidence.)

\* \* \* \* \*

Mr. Myatt: In addition thereto, Mr. Examiner, General Counsel would like to amend the consolidated complaint 13-CC-265 and 13-CE-6, specifically Paragraph 8, by adding to Paragraph 8 a further subdivision C, this subdivision being the same language as 6-C of the amended complaint of 260; in other words, Paragraph Subdivision C of Paragraph 8 would read: On or about June 5, 1961, the Union modified its proposed addendum to the agreement and Article 33 to read as follows.

Trial Examiner: Any objection, gentlemen? There being none, the motion is granted.

\* \* \* \* \*

14 **Walter E. Brown**

was called as a witness by and on behalf of General Counsel, and, having been first duly sworn, was examined and testified as follows:

\* \* \* \* \*

15 Direct Examination

\* \* \* \* \*

Q. By whom are you employed, Mr. Brown? A. Swift and Company, Chicago plant.

Q. And can you tell us in what capacity, sir? A. I am a division superintendent of the Chicago plant office.

Q. And what are your duties as division superintendent? A. I am responsible for labor negotiation, protection, results of two service departments, the cafeteria and the employee sales.

Q. And were you employed in this capacity during the year of 1961, sir, or a portion of the year 1961 that has transpired? A. Yes, sir.

Q. Now, in your capacity as division superintendent in charge of labor negotiations, did there come a time when you were contacted by the Respondent Local 710 with respect to contract negotiations, sir? A. Yes, sir.

Q. And when was that and how did that come about, sir? A. A letter was received dated February 1, 1961, from Mr. O'Brien of 710 stating that the Union wished to—

\* \* \* \* \*

16 A. Stating that the Union desired to negotiate a new agreement.

\* \* \* \* \*

Q. (By Mr. Myatt) I show you General Counsel's Exhibit 2 for identification, and ask you if you—this is the letter which you referred to in your testimony? A. Yes, sir, this is the letter.

\* \* \* \* \*

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 2, was received in evidence.)

Q. (My Mr. Myatt) In response to this letter,  
17 what, if anything, did you do, sir? A. I replied under date of February 6, acknowledged receipt of the February 1st letter, stated that Swift Meat Packing Plant wished to bargain separately and not be bound by the results of negotiations with any other employers. I suggested also that a written outline be prepared by the Union of their proposals.



Mr. Myatt: Would you mark this General Counsel's Exhibit 3, please.

(The document above-referred to was marked General Counsel's Exhibit No. 3 for identification.)

Q. (By Mr. Myatt) Now, may I ask you, sir, was this reply by way of mail, by a letter? A. Yes, sir.

Q. And was this over your signature, sir, or name? A. It was over the signature of C. J. Murray, Plant Superintendent, typed by me.

\* \* \* \* \*

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 3, was received in evidence.)

18 Q. (By Mr. Myatt) Now, as a result of a reply on February 6th, did you then, or when did you have a meeting with the Union, sir? A. Our first meeting was on May 25, 1961.

Q. Would you tell us how this came about, sir? A. I received a telegram from Mr. O'Brien, dated May 24, requesting a meeting with the Company. I responded to that by telephone to Mr. O'Brien, and arranged a meeting for the following day.

\* \* \* \* \*

Mr. Myatt: General Counsel's Exhibit No. 4 purports to be the telegram received by Swift plant from John T. O'Brien, Secretary-Treasurer of Local 710. It's been stipulated that this is the document.

Trial Examiner: General Counsel's Exhibit 4 is admitted.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 4, was received in evidence.)

19 Q. (By Mr. Myatt) Now, prior to this telegram of May 24, 1961, had you any communication, contact with the officials of Local 710, sir? A. Yes. We received—

Q. When was that? A. We received a letter dated April 14 with a general heading: To all Employers, inviting us to attend a meeting in the stock yards on April 18, at least the envelope was postmarked April 18. We received twenty-six pages of printed material from the Union. That was headed Proposed Amendments to the Existing Agreement.

\* \* \* \* \*

Mr. Myatt: Would you stipulate that this constitutes the twenty-six page document of the Union's proposals to the companies?

Mr. Dunau: Yes, I will so stipulate.

\* \* \* \* \*

20 Mr. Myatt: I offer in evidence, Mr. Examiner, General Counsel's Exhibit 5, which is a document consisting of twenty-six pages, headed Proposed Amendments to the Packing House Agreement, etc., and it has been stipulated that this is the document.

Trial Examiner: General Counsel Exhibit 5 is admitted.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 5, was received in evidence.)

Q. (By Mr. Myatt) All right. Now, Mr. Brown, on May 25, did you meet in fact with Local 710? A. Yes, sir. We met in the Shore Drive Motel at about 58th and the Lake, in the afternoon of that date.

Q. And at that time, did the Union—or what were the Union's demands with regard to Swift, sir; can you tell us? A. Well, we were presented with four pages of printed material, two of which were headed Addendum, and the other two covered economic issues, wage rate increases, vacation, liberalization, cost of living, and so forth.

Q. Did I understand you to say that two pages were headed Addendum? A. Yes, sir.

\* \* \* \* \*

21 Q. (By Mr. Myatt) I show you what has been marked for identification as General Counsel's Exhibit No. 6, and ask if you recognize that document? A. Yes, sir.

Q. Would you tell us what it purports to be? A. This is the material submitted by the Union to us on the May 25th meeting.

• • • • •  
22 (The document above-referred to, heretofore marked General Counsel's Exhibit No. 6, was received in evidence.)

Direct Examination (Continued)

23 Q. (By Mr. Myatt) Could you tell us, sir, who was present at this meeting on May 25, 1961, for the Union, sir? A. For the Union, Mr. John O'Brien, Mr. Frank Schmidt, Mr. Herbert Rempert, and Mr. Marty DeWan.

Q. And who was present for the Company other than yourself, sir? A. Mr. C. J. Murray and Mr. Harry Swearingen.

Q. I show you Article 33 entitled Extra Equipment of General Counsel's Exhibit No. 5, and ask you if you are familiar with that, sir? A. Yes, sir, I am familiar with it.

Q. Was there any discussion at this meeting on May 25 concerning Article 33? A. No, sir.

Q. Was there any discussion at this meeting on May 25 concerning the two pages of Addenda in General Counsel's Exhibit No. 6, the proposals, four-page proposal given to you? A. Yes, sir. That subject was discussed.

Q. Would you tell us briefly and as concisely as possible, sir, what was the discussion concerning the Addenda on this four-page proposal, and who said what, sir? A. Mr. O'Brien said that there were numerous brokers with permits arranging for drivers to come over the road into Chicago and make direct deliveries to consignees in the city

24 after long road trips. He contrasted this with the so-called legitimate situation whereby an over-the-road driver brought his load to a city dock or terminal where the city man then took over for local distribution. He said that the ICC regulations were being violated by the first category described; also mentioned that there were a good many city drivers out of work.

We asked for further clarification of a phrase in there, into and out of Chicago city limits, and posed a question of a load originating in Gary and delivering to Chicago, as to whether such a load and delivery would be in violation of the Addendum.

The question of our new plant under construction at Rochelle was brought up by Mr. Rempert, and we stated that it was quite practicable to consider direct deliveries to Chicago customers from Rochelle with the same truck and driver. We said that as we understood the Addendum, it would cause the company—require the company to function as a policeman, and would probably increase our costs.

Mr. O'Brien expressed doubt as to the latter eventuality. We—

Q. Go ahead, sir. A. In conclusion, we said that it would have to be evaluated by our people in the transportation department, and we could not express our views at that time.

25 Q. And did that terminate the discussion between the Company and the Union on May 25 with regard to the Addendum, sir? A. With regard to the Addendum, yes.

Q. Do you—did there subsequently come a time when you again met with the Union during negotiations, sir? A. Yes. We met on May 31 in the stock yards.

Q. And, again, sir, who was present for the Union? A. Mr. Michael Healy, Mr. Andrew Striegel, Mr. Wayne Middleton, Herbert Rempert, and Marty DeWan.

Q. Do you, sir, know what position Mr. O'Brien held in the Union? A. Yes, sir.

Q. What is that? A. He's Secretary-Treasurer.

Q. All right. What position did Mr. Healy hold at that time? A. My understanding is that he was a Vice President of Local 710.

Q. Now, at this meeting on May 31, 1961, was there any discussion—sir, who was there for the Company besides yourself? A. The same parties, Mr. C. J. Murray and Mr. Swearingen.

Q. At this meeting, was there any discussion between the Company and the Union with respect to the proposed Addendum? A. Yes, sir, there was.

Q. Would you again briefly state for the record,  
26 sir, what the discussion was, identifying the parties?

A. Well, fairly early in the meeting, Mr. Healy said that there was some new wording that the Union wished to present with respect to the Addendum, and he gave us this wording, and told us where in the first paragraph it should be inserted. We then proceeded to discuss the issues.

Q. Go ahead, sir. A. And the Addendum was then discussed at the conclusion of the meeting.

Q. This new wording, was this given to you in the form of a written document or were these notes that you took, sir? A. It was orally stated by Mr. Healy, and I wrote it down.

\* \* \* \* \*

27 Q. (By Mr. Myatt) Would you use this, sir, and tell us, with the use of that memorandum, what the changes were in the Addendum as indicated to you by Mr.

Healy? A. The new wording submitted by Mr.  
28 Healy was: Delivered only to a city dock and not directly to a consignee, and will be delivered—this new wording follows the phrase in the first paragraph, city limits will be.

\* \* \* \* \*

Q. (By Mr. Myatt) Upon receipt of these modifications of the Addendum, can you tell us what the Company's position was? A. Sir, I didn't get all of that question.

Q. What was the Company's position with regard to these proposed changes in the Addendum? A. We took the position that the Addendum, including the changes, was illegal, and we would not be a party to it nor sign an agreement containing it.

Q. You communicated this fact to Mr. Healy? A. Yes, sir.

Q. And was there any further discussion on the Addendum after you communicated this fact to Mr. Healy? A.

Well, Mr. Healy referred to a clause in the twenty-  
29 six pages of proposed amendments to the agreement, and said that the wording of that clause would take care of anything found to be illegal in any agreement.

Q. Can you point out for us in this agreement what clause Mr. Healy referred to?

Trial Examiner: What exhibit are you referring to?

Mr. Myatt: I am referring now to General Counsel's Exhibit No. 5.

The Witness: It's Article 1 on Page 2, validity clause, starting on Page 2.

Mr. Myatt: Thank you, sir.

Q. (By Mr. Myatt) And are you able now to tell us, sir, if anything else took place at this meeting on May 31 with regard to the Addendum or the changed Addendum as indicated at that time? A. Nothing more took place with regard to the Addendum.

Q. Did the Company agree to sign the contract? A. No, sir.

Q. Now, directing your attention, sir, to June 1, 1961, could you tell us what events transpired then between members of 710 and Swift Packing plant? A. Well, we were struck on June 1 by 710.

Q. And did the members of 710 who are employees of Swift Packing plant refused to work? A. Yes, sir.

\* \* \* \* \*

30 Q. All right. Do you know, sir, how long this strike continued? A. It continued until June 6, 1961.

Q. Are you able, sir, to tell us how the strike concluded or how it was terminated? A. Yes, sir. A memorandum of agreement between the Union and the Chicago plant was signed on June 6.

\* \* \* \* \*

Mr. Myatt: Will you stipulate that this was the memorandum entered into on June 6?

Mr. Dunau: Yes, we will stipulate.

31 Mr. Myatt: At this point, Mr. Examiner, I wish to offer into evidence General Counsel's Exhibit 7, memorandum of agreement between Swift Chicago Packing Plant and Local 710.

Trial Examiner: It's admitted.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 7, was received in evidence.)

Q. (By Mr. Myatt) Was this memorandum of agreement the final contract between Swift Packing Plant and Local 710, sir? A. No, sir.

Q. Was there ever a final contract entered into between Local 710 and Swift Packing Plant? A. Yes, sir.

Q. And can you tell us, sir, when this occurred? A. Well, an agreement entitled Articles of Agreement and a strike settlement agreement were both signed by the Union on August 28, 1961.

Q. Did you sign for the Company, sir? A. I counter-signed Mr. Murray's signature.

\* \* \* \* \*

34 Q. (By Mr. Myatt) Now, sir, with regard to the memorandum of agreement of June 6, which is Gen-

eral Counsel's Exhibit No. 7, when and where was that executed, sir? A. That was executed on June 6, in the chambers connected with the Federal Court.

• • • • •  
Q. (By Mr. Myatt) Was this in connection with an injunction proceeding before the District Court? A. Yes, sir.

Q. Now, I also believe I asked you, sir, whether or not that was the final agreement between Swift Meat Packing Plant and Local 710, and, as I recall, sir, your testimony was that it was not? A. That is correct. It's not the final agreement.

Q. Was a subsequent agreement arrived at? A. 35 Yes, sir.

Q. And when was that, sir, if you know? A. The Articles of Agreement and a Strike Settlement Agreement were signed by Mr. O'Brien on August 28.

Q. And did the company also enter into the agreement at that time? A. Yes, sir.

• • • • •  
Mr. Myatt: It was stipulated by the parties that this is the final agreement executed between Local 710 and Swift Packing Plant, and also contained thereon is a strike settlement agreement and the Addendum attached thereto as Exhibit A.

Trial Examiner: Exhibit 8 is admitted.

• • • • •  
36 Cross Examination

Q. (By Mr. Dunau) I understand you had a meeting with representatives of Local Union No. 710 on May 25 or May 26; is that correct, sir? A. May 25.

Q. May 25? A. Yes, sir.

Q. What were the economic issues in dispute between Local 710 and Swift on May 26th? A. You say on May 26th?



Q. Yes. A. Wage rates, increases, vacation liberalization, cost of living, add the increment into the rate and establish a new base, holiday substitution for two  
37 holidays, health and welfare and pension. And in connection with the wage rate adjustment requested, there was a new classification and rate requested for that ten-ton or over.

Q. Was there a disagreement at that time about a five-day work week? A. No, sir.

Q. You had another meeting with representatives of Local 710 on May 31; is that correct, sir? A. Yes, sir.

Q. Were the same economic issues in dispute at the May 31st meeting? A. Yes, sir.

Q. You had a memorandum of agreement signed on June 6 between Local Union No. 710 and Swift which is in evidence as Company's Exhibit 7. What economic issues were in dispute prior to the signing of this memorandum of agreement on June 6? A. To the best of my memory, the ones I have mentioned.

Q. So those economic issues remained in dispute until the signing of the memorandum of agreement on June 6; is that correct, sir? A. Yes, sir.

Q. The Addendum which is part of the agreement which was executed in August between Swift and Company and Local Union No. 710 is different, is it not, from the Addendum which had been presented to you on May 25  
38 by Local 710? A. Yes, sir.

Q. When did the change in the Addendum take place, sir? A. To the best of my knowledge, sir, it took place on June 5 in the Federal Court room.

Q. Do you recall whether representatives of the Union on June 1 handed you a new version of the Addendum and said that the old version of the Addendum was being withdrawn? A. On June 1, no, sir, they did not.

Q. On June 2nd? A. No, sir.

Q. Have you any familiarity with the new Addendum prior to June 1? A. No, sir.

Q. This was the first you knew of the new Addendum?  
A. Yes.

Q. Did you understand when the new Addendum was handed to you that the old Addendum was no longer in the picture? A. Yes, sir.

39 Q. Now, was part of the agreement reached on June 6 to the effect that the new Addendum would be incorporated into the final form of the agreement which would be later executed—the final agreement which was ultimately executed in August of 1961—with the understanding that the validity of the new Addendum would be submitted to the Labor Board for determination? A. Well, sir, the agreement reached on June 6, the memorandum of agreement did not contain a reference to an Addendum.

Q. Is that correct. But in addition to what was reduced in the memorandum of agreement, was there an oral understanding on that date that the new Addendum would be incorporated into the agreement which would be ultimately signed and the validity of this new Addendum would be placed in issue or—

40 The Witness: That was my understanding, sir.

43 **James C. DeHaven**

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. Myatt) Mr. DeHaven, by whom are you employed? A. Swift and Company.

Q. And in what capacity? A. As District Superintendent of the Central territory.

Q. And just what do these duties entail, sir? A. I am responsible for the operating matters, including labor negotiations for the Sales Units in the central territory.

Q. Now, you said Sales Units. Is this a separate and apart from the Meat Packing Plant of Swift and  
44 Company, sir? A. Yes.

Q. Were you so engaged in this occupation beginning January, 1961? A. Yes.

\* \* \* \* \*

45 Q. Did there come a time when you did attend a meeting with the representatives of Local 710? A. Yes.

Q. When was that, sir? A. I first met with Local 710 on Monday, May 29.

Q. Now, prior to this meeting, could you tell us, sir, whether or not you had received any proposals or demands from the Union relating to contract negotiations? A. I received in the mail a twenty-six page proposal from the Unions headed Amendments to the Contract.

\* \* \* \* \*

46 Q. (By Mr. Myatt) I show you Counsel's Exhibit 5, proposed amendments to the Packing House agreement, etc.; is this the type of document that you are referring to, sir? A. Yes, sir.

\* \* \* \* \*

Q. Now, would you tell us did you attend this meeting of May 29, sir? A. I did.

Q. Who was present for the Company other than yourself? A. Mr. Davidson, Manager of our South Chicago Sales Unit.

Q. And who was present for the Union, sir? A. Mr. Healy, Mr. Joyce, and Mr. Rempert.

Q. Could you tell us, sir, in brief, concise language, what took place at this meeting? A. At this meeting, I was presented with a three-page proposal by the Union.

Q. Was this in addition to the twenty-six page proposal you had received? A. This was in addition to the twenty-six page proposal that I had received.

\* \* \* \* \*

47 Q. (By Mr. Myatt) I show you, sir, what has been marked as General Counsel's Exhibit No. 9 for identification, and ask you if that is a copy of the proposals you received on May 29, 1961? A. Yes.

Q. Incidentally, who gave this to you? A. Mr. Healy.

\* \* \* \* \*

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 9, was received in evidence.)

Q. (By Mr. Myatt) As a result of receiving these proposals, did the Company—what position did the Company take, if any, with regard to these? A. We discussed the proposals, Mr. Healy voluntarily made  
48 a statement at the beginning that the health and welfare and pensions provisions or demands asked for might not apply to Swift and Company because he told me they were going to be voted on by the Swift employees; with this, I passed those two items in my further discussion with him.

He then started at the first demand of the two-year contract. I informed him that if this was the pattern in the industry, we would have no broad area of disagreement on these points.

We then discussed the wages. I made the same general type statement in answer to wages.

We went through and when we came to the Addendum, I told him that I had been informed previously that an Addendum of this type might be presented to me, and that our law department considered it illegal, and that I could not become party to a contract with this incorporated in it.

Q. What was the Union's position at that point, sir?

A. The Union said that their legal advisors said that it was legal and it was a rightful demand for them to make.

Q. Did this conclude the meeting, sir, on May 29? A. This concluded the meeting, except that I asked for a further meeting before June 1, because I told the Union, I had read in the paper that June 1 was a deadline for a possible strike, and I wanted to have another meeting before that time.

49 Q. Did you, in fact, meet with the Union again prior to June 1, sir? A. I did. I met on—May 31, in the evening.

Q. Again, sir, who was present for the company? A. For the Company, Mr. Kelly, Manager of Forest Park, and a Mr. Wagner, who was Manager of Arnold Brothers.

Q. And yourself, sir? A. And myself, yes.

Q. And who was present at this meeting for the Union, sir? A. There was Mr. Healy, Mr. Janopolis, Mr. Reinpert, Mr. Striegel, Mr. Middleton, and Mr. DeWan.

Q. Now, at this meeting of May 31, 1961, was there any discussion relating to the proposed Addendum? A. I told the Union that our position was the same on the proposed Addendum, that we considered it illegal.

Q. And what was the Union's reply to this? A. The Union's reply was the same, that they considered it, on the advice of their people, to be legal.

Q. Did they retract from their demand for the Addendum? A. They did not retract from their demands.

Q. Did this terminate this meeting, sir, or did you continue to discuss the Addendum? A. We went further into discussion of the economic issues, and I told them that our position was the same on some of the economic issues.

50 Q. Was there any further discussion with regard to the Addendum, sir? A. At the close of the meeting, Mr. Healy asked me if a contract without the Adden-

dum and without a Page 16 of the present contract, would be agreeable, and I asked Mr. Healy if he was offering me a contract without the Addendum and Page 16. Mr. Healy replied, no, that will have to be voted on by the membership tonight.

Q. Now, did this then terminate the meeting between Swift Sales Unit and the Union on May 31? A. I then asked for a—to find out what the results of the vote would be. Mr. Healy asked me to phone him the next day, and I said I would. That was the termination of the meeting.

Q. Directing your attention to June 1, 1961, could you tell us whether or not there was a strike of the Swift Sales Units? A. There was a strike at our five Sales Units.

Q. And was there picketing around the plants and facilities of the Sales Units? A. There was picketing around each of the plants.

Q. Now, you have heard Mr. Brown testify, sir, with respect to a memorandum of agreement executed on June 6 in the Federal District Court. Did the Swift Sales Units participate in this or a similar type of memorandum of agreement? A. We signed the same agreement.

51 Q. The same agreement? A. The same agreement, yes, sir.

Q. And again as in the case of the Swift Meat Packing Plant, did the Swift Sales Unit subsequently sign a contract with Local 710? A. We signed five contracts with Local 710, yes.

\* \* \* \* \*

Q. (By Mr. Myatt) You said, sir, that you signed five contracts. Could you tell us whether or not this means that there were different contracts for each Sales Unit? A. They were different insofar as the address of each Sales Unit was mentioned in the individual contracts, and they were signed by the different Sales Unit Managers.

\* \* \* \* \*

Q. (By Mr. Myatt) I show you what has been marked General Counsel's Exhibit No. 10 for identification, sir, and ask you if this is a copy of the agreement entered into between Swift Sales Unit and Local 710?

A. This is one of the contracts, yes.

Trial Examiner: The other four are the same contract, other than for the designation of plant?

The Witness: Yes.

Mr. Myatt: At this point, Mr. Examiner, I wish to move to present into evidence General Counsel's Exhibit No. 10, which is the contract between a Swift Sales Unit—

Trial Examiner: It's admitted.

\* \* \* \* \*

#### Cross Examination

Q. (By Mr. Dunau) Sir, at your meeting with Local 710 on May 29, were there economic issues in dispute between the Sales Unit and Local 710? A. Yes.

Q. What were those economic issues, sir? A. The economic issues were wages, liberalization of vacations, the cost of living index be included into the contract, pensions and health and welfare.

Q. On May 31, were the same economic issues still in dispute? A. Yes, they were.

53 Q. Were the same economic issues still in dispute until the signing of the memorandum of agreement on June 6, 1961? A. Yes.

Q. When were you informed by representatives of Local 710 that the old Addendum was being withdrawn and the new Addendum substituted? A. This came to my knowledge first in the Federal Court on June 5.

Q. That was your first knowledge of it? A. First knowledge of it, yes, sir.

Q. Now, when you executed the memorandum of agreement on June 6, 1961, was there any change to be made in the old Agreement with the Sales Unit other than as specified on that memorandum of agreement on June 6? A.

Those were the items that were to be included into the new contract to change the old one.

Q. No other changes were to be made in the old agreement; is that correct, sir? A. Those were the only economic issues to be changed.

Q. Were there any other issues to be changed? A. The Addendum, if—was to be decided on, as it's being now, and if it were declared legal, we would be forced to negotiate on this point.

Q. Now, aside from the economic issues and the Addendum, was there anything else that was to be changed  
54 in the new Sales Unit agreement over the old one?

A. No. Pardon me, sir, if I may, yes, Page 16 of the old agreement was to be eliminated from the new agreement.

Q. When did you reach an agreement to eliminate Page 16? A. In the chambers of the judge at the Federal Court Building.

Q. On what date, sir? A. June 6.

Q. With whom did you reach this agreement? A. With Mr. O'Brien.

Q. And what was the discussion pertaining to Page 16 of the old agreement? A. We told him that we considered Page 16 to be the same type of agreement as the Addendum, and it was decided that it would, one would, if this one were decided to be legal, then it would be no necessity for that one.

Q. If the Addendum were decided to be legal, there would be no necessity for the Page 16? A. Yes.

Q. And did Mr. O'Brien agree with you that the old Page 16 could be eliminated? A. I base this on the fact that he signed contracts without Page 16; yes.

Q. Well, aside from his signing a contract without Page 16 in it, did you ever get an agreement from Mr. O'Brien saying that Page 16 could be omitted from the agreement?



55 Mr. Myatt: At this point, I want to object to this line of questioning. What bearing does Page 16 of the old contract have on the issues present here. We are stating that the Union had certain demands as of a certain time, and we have never indicated in our complaint about Page 16 or that it had any bearing whatsoever on this issue.

Trial Examiner: Do you have—may I have an offer of proof, Mr. Dunau, please?

Mr. Dunau: Yes, sir. Page 16 of the old agreement contains Article 15, and it's that clause in the old agreement which provides that the delivery of meat and meat products within a fifty-mile radius from the Chicago stock yards will be made exclusively by employees represented by Local 710.

Trial Examiner: I sustain the objection. Let's proceed.

Mr. Dunau: May I, as an offer of proof, submit for inclusion in the file a copy of the 1958 agreement which includes Page 16.

\* \* \* \* \*

56 Trial Examiner: Respondent's Exhibit No. 2 is a document that we were discussing which technically is being offered in evidence by the Respondent. I am denying the offer, and it will be placed in the rejected exhibit file.

Mr. Dunau: I understand that Respondent's Exhibit 2 has been offered and rejected, and will be placed in the rejected exhibit file?

Trial Examiner: That is correct.

\* \* \* \* \*

57

**William A. Kleist**

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

\* \* \* \* \*

Direct Examination

\* \* \* \* \*

Q. For whom do you work, Mr. Kleist? A. Swift and Company, Chicago plant.

Q. And what is your position with Swift and Company, Chicago plant? A. I am in charge of the transportation department.

Q. Is that the packing operation as distinguished from the sales operation? A. Yes, sir.

Q. Now, in performing your job, are you familiar  
58 with the various forms of transportation of meat and meat products which is employed by Swift and Company packing plant? A. Yes, sir.

Q. Will you tell us, please, does that operation involve the use of transport vehicles or carriers, other than those owned by Swift and Company? A. Yes, sir.

Q. Now, these carriers or transportation vehicles, other than those owned by Swift and Company Packing, do they make deliveries from points outside the State of Illinois to points inside the State of Illinois? A. Yes, sir, they do.

Q. And on occasion, do they make such deliveries to places in the City of Chicago? A. Yes, sir.

Q. And on occasion, are such deliveries made to Swift and Company Packing facilities? A. Yes, sir.

Q. And on occasion, are such deliveries made to facilities other than Swift and Company Packing facilities? A. Again, yes.

Q. Other than the deliveries by such vehicles or carriers to Swift and Company Packing facilities in Chicago, can  
59 you tell us some of the other facilities to which such deliveries are made? A. Well, they are delivered to many customers within the City of Chicago.

Q. Can you, for the sake of clarity, tell us some of these customers? A. L. Beck, David Berg, National Tea, Kroger, A. & P. Do you want more?

\* \* \* \* \*

Q. These companies which you have just named? A. They are customers of Swift and Company.

Q. And is then my understanding that these trucking companies are delivering on behalf of Swift and Company directly to these customers of Swift and Company; is that correct? A. Yes, sir.

\* \* \* \* \*

Q. Do these trucking companies that we are discussing pick up from the Chicago plant of Swift and Company? A. Yes, sir, they do.

Q. And do these trucking concerns that we are discussing make deliveries from the Chicago facility of Swift and Company to points outside the State of Illinois? 60 A. Yes, sir, they do.

Q. Of your own personal knowledge, Mr. Kleist, does Swift and Company employ in the capacity which we have been discussing as out-of-state truckers making deliveries to facilities in Chicago, both Swift and Company Meat Packing facilities and companies such as you have enumerated, include Frozen Food Express? A. Frozen Food Express does make deliveries in Chicago; specifically I cannot testify as to whether they make deliveries to the customers that I have already named.

Q. Do they make deliveries to some of the customers of Swift and Company? A. Yes, they do make deliveries.

Q. And these customers are located in Chicago? A. Yes.

Q. In the same capacity, does Swift and Company use Belford Trucking Company, Inc? A. Swift and Company, Chicago, utilizes Belford Trucking, yes.

\* \* \* \* \*

## 61 Cross Examination

Q. (By Mr. Dunau) Sir, you have stated, I believe, that trucking companies pick up from the Chicago plant of Swift and Company and make deliveries to customers from that plant; is that correct? A. Yes, sir.

Q. To what distance do they make deliveries from the plant at Swift and Company? A. Well, we have two categories. They make delivery right within the Chicago commercial zone or any point in the United States.

Q. Do they make deliveries within a radius of fifty miles from the Chicago stock yards? A. Yes, sir.

Q. They do? A. Yes, sir.

\* \* \* \* \*

Q. Yes, sir. Do you have a contract with any of these trucking firms that they will make deliveries for Swift and Company for a thirty-day period?

\* \* \* \* \*

63 The Witness: Yes. We do have contracts with carriers.

Q. (By Mr. Dunau) To do what, sir? A. To haul our freight.

Q. What are the terms of those contracts? A. I am not acquainted with the terms of the contract.

Q. Do you have a contract with any of these trucking firms to haul more than a single load of goods? A. Yes.

Q. When they haul—do you have a contract with a trucking firm that they will on Monday haul a load of goods, and you are obligated to provide them with a second load of goods on Tuesday, and a third load of goods on Wednesday? A. No, sir.

Q. You are not obligated to provide them with any load, but the one that you put on that truck; is that correct?

\* \* \* \* \*

64 The Witness: No, this is not correct.

Q. (By Mr. Dunau) Would you explain in what respect it's not correct? A. There are guaranteed tonnages, over a period of time.

Q. What does that mean, when you say there is a guaranteed tonnage for a period of time? A. For example, if a contract were executed for one year, we would guarantee this carrier, for example, again, 100,000 pounds during this particular time.

Q. For a one-year period? A. If that was the terms of the contract.

\* \* \* \* \*

65 Q. (By Mr. Dunau) Do you generally contract on that basis?

\* \* \* \* \*

The Witness: As to the general policy, I should say that I have no knowledge, because the contracts as such are not executed by our office.

Q. (By Mr. Dunau) Do you have any knowledge of what the general practice is? A. As to the time, as to the length of time, is that what you have in mind?

Q. What is the general practice with respect to arrangements between Swift and Company and trucking firms pertaining to the delivery of products to the Chicago area?

\* \* \* \* \*

66 The Witness: I would like to get a little clarification. The general practice is not contract.

Q. (By Mr. Dunau) The general practice is not contract? A. If that answers your question.

Q. That answers my question. Then the exceptional practice is a guaranteed tonnage contract? A. Yes.

Q. You testified, I believe, that you engaged trucking firms to make deliveries within the Chicago area from the Meat Packing Plant to customers; is that correct, sir? A. Yes, sir.

Q. Do you make such contracts or do you have such an arrangement only when you do not have equipment of your own by which to make such deliveries? A. Yes, sir.

Q. You do not have such arrangements—you do not engage trucking firms except—you do not engage trucking firms to make deliveries from the Packing Plant to customers within the Chicago area if you have equipment of your own by which you can do it? A. Yes, sir, that is correct.

Q. You do not do it unless you have no equipment of your own? A. That is correct.

\* \* \* \* \*

Trial Examiner: Let me ask you this question, Mr. Witness. In addition to Local 710 and in addition to your own transportation equipment, do you employ other truckers to transport your goods and products in the area?

The Witness: I don't know what their Union affiliations are.

Trial Examiner: Do you employ other trucking companies?

The Witness: Yes, sir.

\* \* \* \* \*

**William Williams**

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

\* \* \* \* \*

68 Direct Examination

Q. (By Mr. Ehrlich) Mr. Williams, by whom are you employed? A. Swift and Company.

Q. And what is your job? A. I am Manager of Motor Carrier Division of the General Transportation Department.

Q. Is that the Sales Division or the Packing? A. That is the General Transportation, that has jurisdiction over all transportation of Swift and Company's plants.

Q. And how long have you been thus employed? A. Well, on the present job, about two or three years.

Q. Are you familiar with the transportation of meat and meat products by the Sales Division of Swift and Company?

A. Yes, sir.

Q. Does that Division of Swift and Company use out-of-state carriers for the transportation of meat and meat products? A. Yes, sir.

Q. Do such carriers make deliveries from points directly outside the State of Illinois to points within the city limits of Chicago? A. Yes, sir.

Q. And do they do this for Swift and Company Sales Division? A. They do it for Swift and Company.

Q. Do they make such deliveries directly to customers of Swift and Company? A. In Chicago, yes, sir.

Q. Would you be kind enough to name a few such customers of Swift and Company that such out-of-state truckers make deliveries to? A. Vienna Sausage, Oscar Mayer, Jewell Tea, National Tea, Kroger, A. & P.

Q. (By Mr. Ehrlich) Now, to the best of your knowledge, within your knowledge, Mr. Williams, does Swift and Company Sales use Frozen Food Express? A. Yes.

Q. In the capacity we have just discussed? A. Yes, sir.

Q. Does it use Belford Trucking Company, Inc. in the capacity we have just discussed? A. Not into Chicago; out of Chicago they do.

Q. What about Refrigerated Transport Company, Inc.? A. They deliver in town.

Q. They make deliveries? A. Yes.

Q. To Chicago, into Chicago? A. Yes, sir.

Q. To customers of Swift? A. Yes, sir.

70 Q. What about Trans-Cold Express, Inc? A. No.

Q. Watkins Motor Lines, Inc.? A. Yes, sir.

**Murrell Swanson**

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

\* \* \* \* \*

Direct Examination

Q. (By Mr. Myatt) Mr. Swanson, by whom are you employed, sir? A. Wilson and Company.

Q. In what capacity, sir? A. Manager of Industrial Relations.

Q. And what does this job entail, sir? A. A lot  
71 of grief.

Q. You have my sympathy. A. I am responsible for the handling of labor matters insofar as the Company's Packing Plants and branch houses and subsidiaries are concerned, which entails the negotiating of contracts, the handling of policy matters, and grievances, likewise.

Q. How long have you been so employed, Mr. Swanson? A. Since 1943.

Q. Now, Mr. Swanson, during the year 1961 that has transpired thus far, did you have occasion to engage in negotiations with Local 710 with regard to a contract for Wilson and Company and others? A. I did.

Q. Would you tell us when this occurred, sir, and how it came about? A. Well, the past history of negotiations in the Chicago area has been that a group of the so-called national packers have negotiated as a group, but not as an association. It has been with the understanding that the individual companies either go along with the majority thinking of the group in a settlement of the dispute or the questions before it, or they withdraw from the group and negotiate on their own.

And these negotiations took place in 1961, well, to begin with, to get the proper history of the whole sequence, the Union filed their notice on February 1  
72 on opening the contract.



Q. Yes? A. And on February 14, they sent notice to the various parties, including Wilson and Company, requesting a joint meeting of all people with whom they had a contract, which included cartage companies, sausage houses, hotel supply houses; it was a conglomeration of industry of all types.

Q. When was this meeting to take place, sir? A. On April 21.

Q. And did such a meeting take place? A. It did.

Q. Did you attend? A. I attended as the Chairman of the packer group, yes.

Q. Now, you said as the Chairman of the packer group. Does this mean, sir, that Wilson was a part of this group?

A. That is correct, sir.

Q. Could you tell us—you were representing the packers group rather than your Employer; is that correct, sir? A. I was representing the packer group including my Employer.

Q. Including your Employer? A. Yes, sir.

Q. Thank you, sir. Now, could you tell us, sir, who was present for the Union at this meeting of April 21? A. I believe I could tell you some of those that were present.

73 There was a lot of representatives of the Union at that meeting which I had never met prior to that particular day.

Q. Those that you recall, sir? A. Mr. O'Brien was there. Mr. Healy was there. Mr. Striegel was there, as I understand it, why I would guess there were fifteen or twenty others that some of which I knew and some of which I didn't.

Q. In addition to yourself, sir, who was representing the packer's group? A. Harold Mayer, who is Vice President of Oscar Mayer and Company.

Q. And could you tell us, sir, briefly what transpired at this April 21st meeting? A. Well, I think to give you a brief synopsis of what took place, Mr. O'Brien was the principal speaker. He indicated that he had called this

particular meeting of all parties with whom they had a contract in the Chicago area. He indicated that it was his desire to negotiate with the entire group which was something that hadn't been done prior to that time. He indicated that, in his opinion, the Union had a real problem in Chicago, that the larger packers had moved out of the area, that product was being shipped into the Chicago area from out of state, that he felt that we had been able to arrive at a satisfactory settlement down through the years on economic matters, but on this particular occasion, that they specifically had to have some language in the contract which protected the Union in terms of deliveries and pickups in the Chicago area, and he felt that this would be a real problem; and the biggest part of that meeting, I think, was devoted to that one subject rather than any discussion of contractual matters.

74 Q. All right, sir. Was any definite conclusion reached at this meeting with regard to the protection that the Union said it had needed on this matter? A. There was no conclusion arrived at for the simple reason that, as Chairman of the packer group, I indicated to Mr. O'Brien and his delegates that the packer group was unwilling to negotiate on the basis of his suggestion with cartage companies, and sausage houses, and hotel supply houses; that our past history of negotiations had been a negotiation between his Union and the packer group and that it was our desire to continue on that basis and that my purpose in being at the meeting was to establish a meeting for negotiations with the packer group as we had in the past.

Q. As a result of that, sir, did the packer group and Local 710 have a meeting to involve negotiations between them only? A. Along this meeting of the 21st, it was agreed that we would commence negotiations on that basis on May 3.

Q. And did such a meeting take place? A. It did, sir.

Q. And again, sir, who was present for the Union?

75 A. Well, again, there was John O'Brien and Mike Healy, and I would guess just about the same group

that was present at the 21st meeting, quite a few of which I didn't know.

Q. And were the same people present for the packer's group? A. Well, the same people were present for the packer's group, that is myself, plus Harold Mayer, and representatives of the various companies were present in the May 3rd meeting. They were not in the April 21st meeting.

Q. All right, sir. Now, with reference to the May 3rd meeting between the packer's group and Local 710, would you tell us—could you tell us, sir, briefly, what transpired?

A. Well, I think, to get the proper sequence, in the meeting of April 21st, the Union gave to Mr. Mayer and myself a copy of what was to be their demands and, as I recall, they gave us sufficient copies so that we would have a copy for each member of the so-called packer group.

Q. I show you General Counsel's Exhibit No. 5, and ask you, sir, if this is a copy of what was presented to you April 21st by the Union? A. This is it, sir.

Q. Now, sir, we are up to May 3, 1961, at the meeting. Could you tell us what then transpired between the packer's group and Local 710? A. Yes. As I recall it,

76 and to the best of my recollection, a big portion of that meeting was taken up by a statement by Mr. O'Brien and to the packer group which was pretty much a repetition of his statement made to the larger group on April 21, to the extent that in his opinion we could work out the various details of a contract insofar as economic issues were concerned, but currently, they had a real problem and he wanted to discuss it. He went into great details to explain how their membership was dwindling, that so-called gypsies were making deliveries in the City of Chicago, and that they had to have some protection in the form of a contract that would restrict both pickups and deliveries in the City.

Q. Did he make any specific proposals with regard to this so-called protection? A. Specific proposals were to

the extent that the protective language that they were asking for were in the document that he had given to us in the meeting of April 21.

Q. Did he identify any particular article in that document, sir? A. I don't know that he identified any particular article, in some of the discussions I know he referred to Article 16. I think he referred to Article—my memory slips me, I know 16 is one particularly that they specifically referred to.

Q. If I were to show you the document, sir, would this refresh your recollection? A. I would think so, yes, sir.

Mr. Myatt: Let the record show that I am showing the witness General Counsel's Exhibit 5.

The Witness: Well, as I previously stated, Article 16 was one of the specific articles that was referred to; 31 and 32 and—yes, 31 and 32, and there was some discussion with reference to Article 34 and 35 and again 36.

Mr. Myatt: Thank you, sir.

Q. (By Mr. Myatt) After Mr. O'Brien made the Union's position known to the packer's group in this May 3rd meeting, sir, what was the packer group's reply or position in regards to these proposals? A. Well, my best recollection is that we took a recess at that time, and it was the consensus of opinion of the packer's group that we make an offer in terms of certain economic issues, that we do that in terms of getting away from the Union's voluminous document, and get the thing down to where you could see where you were going, but that we specifically indicated to the Union that we would have no part of any language restricting deliveries or pickups in the Chicago area.

Q. Was this communicated to the Union? A. That was, yes, sir.

Q. And what was the Union's response? A. The Union's reaction was that it did not meet the problem, that on the economic issues, it was short of what they felt constituted a settlement, but it didn't treat the real problem that

they had been harping on, and they indicated that  
78 that was the major issue. They indicated that it  
was an issue that, for the first time in the history,  
that they would possibly have to strike the industry in  
Chicago.

Q. Who indicated this? A. Mr. Healy.

Q. Did anything else transpire at this meeting of May  
3, sir, with regard to this particular issue? A. It did not.

Q. Was there a subsequent meeting between the packer's  
group and Local 710 after May 3? A. Well, I believe the  
next meeting was not—well, I don't know whether—it  
wasn't actually a meeting, is what I am trying to say.  
The meeting referred to here was on May the 3rd. On  
May the 8th, Harold Mayer and myself had a, at least  
an informal discussion of the matter at the stock yards,  
on May 8.

Q. With whom sir? A. With John O'Brien and Mike  
Healy.

Q. Now, were you there in your capacity as Chairman of  
the packer's group, sir? A. I was, sir.

Q. And what was the purpose of this meeting? A. Well,  
the purpose of the meeting, insofar as I was concerned, was  
to determine, if possible, where we might be going from  
where we were at, and to also determine whether  
79 this huge problem that the Union said they had that  
something had to be done about was an insurmount-  
able obstacle that would result in nothing short of a strike.

Q. And what occurred at this meeting, sir? A. Well, I  
think we discussed the thing rather thoroughly. I think  
John again related what he felt the problem was.

Q. Pardon me, sir, by John, you are referring to John  
O'Brien? A. John O'Brien, that is right, sir.

Q. Yes? A. We discussed the possibility of working  
out something and leaving that out. I believe one of the  
suggestions I made was that I thought that one of the  
problems they had was within their own internal union,

and it might make sense to forget this particular issue and let them clean up their own back yards in their own union. That didn't get very far.

Q. Go ahead, sir. A. I think again Mike Healy made it clear in this particular discussion that there was no question but what the end result would have to result in some specific restrictive language. I think in this particular meeting, Mr. O'Brien indicated that he wasn't particularly talking about the language as proposed in the document that they had submitted to the packer's. He felt that he had some type of language that could be worked out and it might be other than they had in that document, and he also indicated that possibly setting it up as an Addendum and not making it a part of the agreement might be the answer.

80 Q. Did this conclude this informal discussion with regard to this type of agreement? A. That is correct, sir yes.

Q. Did there then come a time, sir, that you again met with Local 710's representatives and the packer group? A. The next meeting of the packer group and the Union was held on May 12.

Q. Again, sir, who was present for the Union? A. About the same group that had been previously present.

Q. And as for the packer group, the same? A. Yes, sir.

Q. And at this meeting, sir, was there any discussion, and if so, by whom, concerning these protective measures or clauses that the Union was seeking? A. Prior to the meeting of May 12, I had had a meeting with the packer group. I had relayed to them the results of my meeting with Mr. O'Brien, Mr. Healy, and that, in my opinion, this was something that the Union was going to stand pat on, and there we were and where did they want to go. Do you want all the details of this?

Q. Not of your meeting with the packer group, sir, but with the packer group meeting with the Union on May 12.

A. As a result of the meeting with the packer group, the

majority of the packer group indicated a willingness  
S1 to work out some type of compromise language  
which would get them off the hook on the subject  
of restrictions of deliveries.

Q. Was this relayed to the Union at the meeting of  
May 12? A. In the meeting of May 12, there were three  
specific proposals made by the packer group, and through  
me, as Chairman, and the Union was notified on that same  
day that the proposals were, with reference to this par-  
ticular issue, not made on behalf of either Armour and  
Company or Wilson and Company, because Armour and  
Company had withdrawn from the group that morning,  
and Wilson and Company had done likewise.

I remained as Chairman of the group, and Wilson and  
Company was not a part of the group.

Q. Now, sir, on May 12, do I understand that proposals  
were presented to 710 by the packer group? A. There  
were three specific proposals made at three different times  
on that particular day, each one in an effort to solve the  
specific problem that the Union said they had.

Each one of those proposals was rejected completely by  
the Union as being entirely inadequate, and again the  
reaction of the Union, and namely Mr. Healy, as Vice Presi-  
dent, was that there was only one answer, and that was to  
hit the bricks.

Q. Hit the bricks means strike, sir? A. It does to me.

Q. Thank you. Did you come to any conclusion at  
S2 this meeting, sir? A. We did not.

Q. Did you schedule any subsequent meetings, and  
if so, did you meet? A. We did not schedule any subse-  
quent meetings on that date, and I don't know whether it  
was the next day or several days later that I called John,  
that is Mr. O'Brien, and suggested that possibly a smaller  
group of his people and the packer group might sit down  
and discuss the thing and determine whether or not there  
was some area in which they could find an answer on this  
specific subject.



As a result of that phone call, we had a meeting in the Sherman Hotel in which Mr. O'Brien was present for the Union, Frank Schmidt was present for the Union, as I recall, and I think Mike Healy was also present.

Q. And did you—I am sorry, sir, it must have escaped me, when did this meeting occur? A. I would guess it was approximately the 17th of April.

• • • • •

The Witness: I beg your pardon, May.  
• • • • •

Q. (By Mr. Myatt) On behalf of the packer's group, then, were the representatives the same as in the past?

A. They were not. The packer group consisted of myself and Harold Mayer, Harry Kasselmann from High S3 Grade, and a Mr. Wolf from Oscar Mayer.

Q. Now, sir, with regard to the protective provisions language, whatever else the Union said that it needed, during your past negotiations, was anything discussed at this meeting relating to that? A. That was primarily the largest part of the meeting, and, of course, interspersed in these meetings were some changes with reference to the economic features, but that thing was moving along. The stumbling block was this one thing, the restriction of deliveries and pickups.

Q. All right, sir. Would you be more specific and tell us what was said in this regard? A. In this particular discussion, Mr. O'Brien made a suggestion that possibly this type of language would be acceptable to the Union, and he, as I recall, he recited that verbally, and Mr. Kasselmann and Mr. Wolf sat down and wrote it out, and then there was some changing of the application of that, and the end result of that discussion on the 17th was that we possibly had language that the Union would accept, and that the packer group or what was left of the packer group would possibly accept also.



Q. I see. But you had not come to any agreement, firm agreement at that date? A. That is correct.

84 Q. On the language? A. That is correct, sir.

Q. All right. Now, with respect to this language which the packer group and 710 were working out on May 17, did there come a time when you came to some acceptable language? A. Yes, sir.

Q. And when was that, sir? A. Well, again, there was a further meeting of the same group, the small group and not the big group on May 22, where this language was rediscussed. It was changed to some extent, and a statement at that time made by the Union that they felt that if the packer group could agree that this is language they would put into an Addendum attached to the contract, that they felt that the Union delegates would also be of the same opinion. No agreement reached, it was a tentative, here is something that we think will get the job done.

Q. There was not agreement reached on May 22? A. That is correct.

Q. Did there come at a time when an agreement was reached as to language? A. On May 23, which was the following day, we had a full dress meeting of the entire Union group and the packer group, in which the Union—or the packer group proposed the language that was discussed the day previously.

Q. Was this verbally or was this in written form, sir?

A. It was in written form.

85 Q. In written form? A. Yes.

Q. And this proposal embodying the language arrived at on May 22 was presented to the Union; what was the Union's response to this? A. The Union proceeded despite the fact that they had indicated the day before that this was something that they thought would jell, proceeded to tear the language apart and proceeded to request that certain language in that proposed Addendum be deleted. As a result of that, we took a recess. I spoke to Mr. O'Brien alone, told him that the thing was going to hell

in a hand basket, that my best recommendation to the packer group was to fold up their books and go home, and if that is the way he wanted it, that is the way it was going to be.

Q. Yes. A. We either had an agreement on—we either were agreeing on the language we had talked about yesterday or we had no agreement, and we were all through.

Q. Did that conclude the meeting? A. That did not.

Q. What occurred after that? A. The Union then took a caucus and came back in and indicated to us that Mr. Jack Healy had made a motion that the proposal as submitted by the packer group be accepted and presented  
86 to the rank and file for its acceptance; except for one thing, they indicated that they would recommend it to the rank and file for acceptance if Swift, Armour and Wilson would go along on the same basis.

Q. Did you assist in drafting the proposal submitted by the packer group, sir? A. I did.

Q. Do you have in your possession copies of this proposal, sir? A. I do, sir.

Q. Do you have them with you? A. I have a copy with me in my briefcase.

• • • • •  
89 Q. (By Mr. Myatt) You have taken the copy of this agreement out of your briefcase, have you? A. Yes, sir, I have.

• • • • •  
90 Q. (By Mr. Myatt) This is the proposal submitted by the packer's group to Local 710 at the meeting of May 25? A. May 23rd.

• • • • •  
Mr. Myatt: Just one moment. At this point, Mr. Examiner, I wish to offer into evidence General Counsel's Exhibit No. 11 as being the proposal.

Trial Examiner: You don't have to describe it. It's been described. It's admitted. He identified it.

• • • • •

91 Q. (By Mr. Myatt) Now, sir, with respect to the Union's statement, I believe you indicated by Mr. Healy, that Swift, Armour and Wilson must accept this proposal; is that correct? A. That is correct.

Q. Did the Union offer an alternative if they did not?

A. If they did not, they did, they said the whole industry would be on the street.

Q. At this stage, sir, had the so-called packer's group agreed with the Union on the economic terms embraced in the contract? A. They had. Wilson and Company had also, because I indicated on behalf of Wilson and Company that we were in accord on the economic issues; we were not in accord on the Addendum.

Q. And when you indicated to the Union— A. That is correct.

Q. —was there any response; if so, what? A. None whatsoever.

Q. Did this conclude this meeting?

92 Trial Examiner: Excuse me. What was the date of this meeting when you said you were in agreement with the economic issues and not on the Addendum? A. I didn't say not on the Addendum. First of all, you have got to remember which hat I got on, Wilson and Company, were in accord; in fact, the packer group and the Union was in accord on the Addendum on the economic issues on the 23rd. Wilson and Company was also in accord on the economic issues on that same date, but they were not in accord with going along with the Addendum, and the Union was so notified as of that date.

Q. Very well, sir. And this was again subject to the acceptance, this condition that the Union put on the— A. The Union's condition was that this was acceptable, they would recommend it to their rank and file, but only on the basis that it was a deal if Armour, Swift and Wilson went along with it.

Q. Thank you, sir. Did this conclude the meeting of May 23rd? A. It did.

Q. Were there any subsequent meetings prior to June 1, sir? A. Well, there was a rather informal meeting on May 31st.

Q. By informal, what do you mean sir? A. Oh, I had called a meeting of the packer group on that particular day in view of the publicity given to the date of June 1 being a deadline for a strike, and had called the packer group together to find out from them if they desired  
93 to have any further discussions of the matter with the Union, and that meeting took place in the stock yards; and the Union on that same day were meeting with either Swift or Armour, I don't know which, also in the stockyards. So, as a part of the proceedings on that day, we asked to have at least a fifteen-minute discussion of the matter with them, and we did.

Q. With whom of the Union? A. I don't recall, just who was present. I know Mr. O'Brien was not. Mr. Healy was, and several others, and just who they were, I don't recall.

Q. And what took place at this time, sir? A. Well, the whole purpose of the meeting was to attempt to convince the Union that their position with reference to striking the so-called packer group inasmuch as they were in agreement just didn't make sense, so I tried to explain to the Union that if they had an argument with Swift, Armour and Wilson, that is the three they ought to strike and not the whole industry, but the flat statement by Mr. Mike Healy was that it's either a deal across the board, everybody, or the whole industry will be out, and that is what he was going to recommend to the rank and file that night, and they had a meeting of the rank and file on that night.

Q. And did this conclude the meeting on May 31st? A. It did, sir.

Q. Now, sir, was there a strike against Wilson  
94 and Company on June 1, 1961? A. There was.

Q. Was there a strike against the individual

members of the so-called packer group? A. There was.

Q. On June 1, 1961? A. There was.

Q. Could you tell us, sir, who composed this packer group? A. Well, I don't know that I could even enumerate, this is a rather fluid group because you could move in or out at will. Sometime in the past Swift had moved out, they had been a part of the packer group.

Q. Maybe I can narrow it down. As of May 23, 1961, can you tell us who composed the packer group? A. I think generally I can. It was High-Grade Packing, Oscar Mayer, Agar Packing, Knipe, Illinois Meat.

Q. Would Knipe be E. W. Knipe? A. That is right, yes.

Q. Maybe I can help you this way. In this group on May 23, you have indicated that Armour and Wilson had disassociated themselves from the packer group sometime in the past; is that correct, sir? A. That is correct.

Q. All right. A. Swift had disassociated, X years back.

95 Q. Swift had disassociated six years back? A.

I said X years back. I don't know how long, it's quite a while ago.

Q. What about South Chicago Packing, sir? A. They were a part of it.

• • • • •

96 Q. I am going to cite a list of names, and ask you if these people were a part, not of the association or any association that sat in, but a part of the packer's group? A. Well, I can only say this, there is an authentic list of those people that are members of this packer group. Again it's not an association, it's a voluntary group. That list is maintained by the Secretary, Mr. Harold Mayer. I think I could give you a general picture as to who are the various companies represented. I may not give you a clear-cut picture.

Q. I understand that sir. A. Yes.

Q. Now, give us a general picture? A. Okay.

Q. Chicago Meat, sir? A. Chicago Meat, I believe is.

Q. Illinois Packing? A. They are.

97 Q. Stockyards Packing? A. That I am not certain of.

Q. Ready Foods? A. They are not, I don't believe.

Q. Packer's Provision? A. I believe they are.

Q. Roberts and Oats? A. They are.

Q. Allen Brothers? A. They are not.

• • • • •

Q. (By Mr. Myatt) Carl Buddy? A. I believe they are.

Q. Rose Packing? A. They are.

Q. Chicago Corn Beef? A. I don't think so.

Q. Dubuque Packing Company? A. They are.

Q. I believe you have already mentioned High-Grade?  
A. That is correct.

Q. Listed in the complaint is Grover Packing. I am informed this is a typographical error, and the correct spelling should be G-r-a-v-e-r Packing. A.  
Graver?

Q. Graver? A. Yes.

Q. And are they? A. Yes.

Q. Marhover? A. Yes.

• • • • •

Q. (By Mr. Myatt) B. Schwartz and Company? A. I believe they are also.

Q. Agar Packing? A. Yes.

• • • • •

99 Q. Pfaelzer Brothers? A. Yes. I believe they are, yes, sir.

• • • • •

Q. As a result of the strike which began on June 1, 1961, sir, were you a party to a proceedings in the Federal District Court here in Chicago? A. I was.

• • • • •

Q. (By Mr. Myatt) Let me clarify this for you.  
100 On June 1, 1961, you have indicated that you were a party to a proceeding in the Federal District Court?

A. On June 5?

Mr. Isaacson: That is right, June 5.

Mr. Myatt: I stand corrected.

Q. (By Mr. Myatt) On June 5, 1961? A. Yes.

Q. And whom did you represent at that time? A. Wilson and Company.

Q. Wilson and Company? A. Yes, sir.

Q. You did not represent the packer's group in this proceeding? A. I did not.

Q. Thank you. Now, as a result of this proceeding in the Federal District Court on June 5, did Wilson and Company arrive at any agreement with Local 710? A. They did.

Q. And when did this occur, sir? A. On June the 6th.

• • • • •  
101 Q. (By Mr. Myatt) Mr. Witness, I believe upon handing me this document, you made a statement that this was what, sir? A. This is the final agreement that was drawn up as a result of an interim agreement that was entered into on June the 6th.

• • • • •  
102 Mr. Myatt: Can we stipulate that this was the agreement or memorandum of agreement entered into between Wilson and Local 710 as to the economic issues on June 6, 1961?

Mr. Dunau: We can stipulate, if you will identify for the record what we are now stipulating to.

Mr. Myatt: We are stipulating to a document which has the heading—

Trial Examiner: General Counsel's Exhibit No. 12 for identification, Gentlemen.

Mr. Dunau: That is correct. We can so stipulate.

Trial Examiner: It's admitted on the basis of the stipulation.

(The document above-referred to, heretofore marked General Counsel's Exhibit No. 12 for identification was received in evidence.)

103 Q. (By Mr. Myatt) As a result of this memorandum of agreement entered into on June 6, sir, did Wilson and Company then enter into a final agreement with Local 710? A. They did, sir.

• • • • •

104 Mr. Myatt: And, gentlemen, can we stipulate that what is now General Counsel's Exhibit 13 be introduced as the final document between Wilson and Local 710?

Mr. Dunau: So stipulated.

Trial Examiner: General Counsel's Exhibit 13 is admitted.

• • • • •

Trial Examiner: Gentlemen, let's shorten up this. Have you got Armour and Company's final contract there?

105 Mr. Dunau: I have.

Trial Examiner: All right. Let's give that General Counsel's Exhibit No. 14 and put it in evidence, then there won't be any question.

Mr. Isaacson: May I suggest that we put in the June 6th memorandum entered into between Armour and Local 710 as well, so then we will have, if I may go on, Mr. Examiner, maybe it will make it a little shorter, if I can finish by sentence. It can introduce both the memorandum of agreement of June 6 between Armour and 710, which will be 14, General Counsel's 14; and General Counsel's 15 will be the final agreement between Armour and Local 710.

Trial Examiner: If there is no objection, gentlemen, I will admit that in evidence. Have the reporter mark it.

• • • • •



(The documents above-referred to, heretofore marked General Counsel's Exhibits No. 14 and 15 were received in evidence.)

• • • • •  
110 Mr. Dunau: Mr. Examiner, the General Counsel and I have agreed to stipulate to receive in evidence as Respondent's Exhibit No. 3, the packing house agreement with Local No. 710 for the period May 1, 1958 to April 30, 1961.

Mr. Myatt: We have so stipulated.

• • • • •  
111 Trial Examiner: Respondent's Exhibit No. 3 is admitted.

• • • • •  
Cross Examination

Q. (By Mr. Dunau) Mr. Swanson, you were the Chairman of what you have described at the packer group during the 1961 negotiations? A. That is correct, sir.

Q. Was Swift ever a part of the packer group during the 1961 negotiations? A. They were not.

Q. Was Armour a part of the packer group? A. In the initial meeting, yes; as of May the 12th, no.

Q. And by the initial meeting, do you refer to the meeting of April 21? A. I refer to the meeting of May 3 which was the initial meeting with the packer group.

Q. And as of May 12, Armour withdrew from the packer group? A. That is correct.

Q. And it did not come back into the packer group for the remainder of the 1961 negotiations? A. That is right.

Q. Thank you. Now, was Wilson part of the packer group? A. They likewise withdrew on May 12.

Q. And did they return as part of the packer  
112 group during any period of 1961 negotiations? A. They did not.

Q. Now, Mr. Swanson, I show you what has been received in evidence as Respondent's Exhibit 3, which is entitled

Packing House Agreement, and on the first page it identifies the agreement as between the Meat and Highway Drivers, etc., Local No. 710, and all large and small packers, sausage manufacturers and trucking lines, signatory to this agreement; are you familiar with this agreement, sir?  
A. I am.

Q. When the reference to small packers is made in that agreement, what does that refer—to what group does that refer, sir? A. I have no idea.

Q. Does it refer to Armour, Swift or Wilson? A. I would assume no.

Q. When the agreement refers to large packers, does it refer to Armour or Swift and Wilson? A. I would assume yes.

Q. Would you assume that all other packers would therefore be referred to as the small packers? A. I have no way of knowing. All I know is this, and that is all I can testify to, is that the agreement was reached between the Union and the packer group, down through the years;

The Union then approached all other companies that  
113 they had contracts on the basis of the then agreed  
on agreement with the packer group, and as I understand it, at least, in all cases, they each signed the same type of contract, and as a result, you got this type of contract.

Trial Examiner: Concerning General Counsel's Exhibit No. 3, there was never any contract signed between these various classifications of packers and Local 710 in the name of a group organization; is that true?

Mr. Dunau: No, sir. That is true. My understanding is that each packer signs the contract individually for himself. It's negotiated on a group basis, but the agreements are individually signed.

Trial Examiner: All right.

• • • • •  
114 Q. (By Mr. Dunau) On May 23, 1961, I understand that a tentative agreement was reached on eco-

conomic issues between the packer group which at that time did not include Wilson, Swift and Armour and Local No. 710; is that correct, sir? A. That is partially correct. In addition to the packer group, Wilson and Company, through me as spokesman, indicated that they were willing to go along on the same basis on the economic issues.

Q. Now, during the period preceding May 23, had there been negotiations concerning a five-day work week? A. There had.

Q. The tentative agreement which was reached on May 23 did not include an agreement on the five-day work week? A. That is correct, sir.

Q. Now, when Armour and Swift were unwilling to go along with the tentative agreement which had been  
115 reached with the packer group and Wilson, what happened to the five-day work week proposal which the Union had initially presented? A. I have no—well, to begin with, the five-day week proposal by the Union dropped out of the picture during negotiations. In the meeting that was had on May 12, the Union indicated the possibility of sacrificing two of the paid holidays in lieu of getting the five-day work week, which was not acceptable to the packer group. In the meeting, in the sub-committee meeting that was held on the 17th, I believe, the five-day week was discussed and it fell out of the picture at that time on the basis that if this group was willing to go along with some form of restrictions on deliveries, that the five-day week would be dropped.

Q. Now, sir, the ultimate agreement which was reached with all packers did contain a five-day work week provision; is that correct? A. That is correct.

Q. And such a provision had not been in the preceding agreement; is that correct? A. Do you mean in the agreement which is this exhibit here?

Q. For the period of 1950, it had not been.

Trial Examiner: Let the record show—

The Witness: That is correct.

Trial Examiner: Let the record show the witness referred to Respondent's Exhibit 3.

116 Mr. Dunau: Thank you, sir.

Q. (By Mr. Dunau) What happened in the interval between the time of May 23 when the tentative agreement which had been reached did not include a five-day work week provision, and June 6, 1961, when the agreement which was reached did contain a five-day work week provision? A. Well, a strike took place on June 1, and the various packers that were a part of the packer group prior to that beat a path to the Union's door to make a settlement, and in making that settlement, and to get the strike off their neck, someone or someone or two agreed to the five-day week, and set the pattern.

Q. The five-day week provision some into being as a result of the strike of June 1; is that correct? A. That is my understanding, yes, sir.

Q. And on June 6, with respect to Wilson itself, had Wilson agreed to the five-day work week? A. Prior to that?

Q. Prior to that? A. There was no basis for agreeing to it. It wasn't a demand, it had been dropped.

Q. When it was presented to you again on June 5, did Wilson go along with the five-day work week? A. On June 5?

117 Q. Yes? A. It was not presented to us on June 5.

Q. When was it? A. June 6.

Q. Did you agree to it when it was presented to you? A. Yes.

Q. Did you first disagree with the five-day work week? A. I don't know which came first, to be very frank with you. This was a discussion of the matter in Judge Perry's Court, the sum and substance of which was in connection with the Addendum, plus the fact that the Union indicated this is the various—or these are the agreements we have reached with the other packers, and in terms of that in the final analysis, we did agree to a five-day week, because the pattern had been set.

Q. On May 23, 1961, Wilson had not agreed to the five-day work week? A. On May 23, 1961, the five-day work week was not an issue. We had an agreement with the Union on all economic issues.

Q. On June 1, a strike took place, sir; is that correct? A. That is correct.

Q. On June 6, Wilson agreed to a five-day work week which it had not agreed to theretofore? A. We had not agreed to it, because it had dropped out of the picture.

Q. Thank you, sir. Now, referring to Respond-  
118 ent's Exhibit 3, on Page 14, appears Article 12.

Would you look at that, please, sir. You are familiar with that provision? A. I am familiar with the items in the contract, yes.

Q. Would you tell me for how long a period of time Article 12 has been in the packing house agreements? A. I doubt whether I could peg it as to a specific period of time. It's been in there for a considerable period of time.

Q. Would it be twenty years, sir? A. I doubt whether—frankly, I don't know. I wouldn't even venture a guess.

Q. Would it have been in during the last three contract terms? A. My guess is yes, on that.

Q. And the last three contract terms were for three-year periods, sir? A. In all cases?

Q. Yes. A. I don't believe so.

Q. Well, what would be the period? A. Approximately eight years.

Q. Approximately eight years? A. Yes.

Q. And it might have been in existence before  
119 that; is that correct? A. That is possible, yes.

Q. Now, in the 1961 negotiations, did the packer group seek to eliminate Article 12 from the agreement? A. Beg pardon?

Q. In the 1961 negotiations, did the packer group seek to eliminate Article 12 from the agreements? A. They did not.

Q. Was there any—was it understood that Article 12 would remain in any agreement which would be negotiated?

A. Well, the matter was silent. It wasn't discussed one way or the other.

• • • • •

Q. (By Mr. Dunau) Is it your understanding that Article 12 would be carried over into the new agreement?

A. I don't know what understanding we had. I can only tell you what happened. The Union submitted a twenty-six page document involving numerous demands of theirs. The packer group, through me as Chairman, submitted to the Union counter demands, none of which involved this particular paragraph.

• • • • •

120 Q. (By Mr. Dunau) Mr. Swanson, I show you what has been marked as Respondent's Exhibit 4, and ask you if you recognize it? A. I believe I do.

Q. Would you tell me when you first saw this?

• • • • •

A. My best recollection of this particular document is that it was a piece of paper that was shown to me by Mr. O'Brien in a discussion that he and I had on May the 8th in which he asked this type of language would be agreeable to the packer group in terms of restricting deliveries and pickups, and my comment was that I didn't think this language was any different than the language they were requesting in their initial demand and that was the end of it.

• • • • •

(The documents above-referred to, heretofore marked Respondent's Exhibit No. 4, was received in evidence.)

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124 Q. (By Mr. Dunau) Are you aware whether there has been a substantial reduction in the number of meat drivers employed by Armour over the period from 1958 to the present? A. I am only aware

of one thing, sir, Armour and Company has curtailed their general operations in Chicago. What effect that has had on their employment in terms of drivers, I have no idea.

127 Q. (By Mr. Dunau) When did Wilson and Company discontinue slaughtering operations in the Chicago area? A. I am not certain whether it was '53 or '54.

Q. And they have had no slaughtering operations in the Chicago area since that time, sir? A. That is correct.

Q. I believe you stated that Armour and Wilson did discontinue slaughtering operations; is that correct, sir? A. Armour and Wilson?

Q. I am sorry. Armour and Swift? A. It's my understanding, but having no direct knowledge that they have.

Q. And is it your understanding that it was during the period between '58 and '61, without knowing when? A. I would have no idea when they did.

Q. During the period between '58 and '61, did Wilson and Company progressively reduce the amount of meat processing it did in the Chicago area? A. Meat processing?

128

Q. Yes, sir? A. No, sir.

Q. It has maintained the same meat processing at the present time as it had in May of 1958? A. We have no more, no less processing now than we had then.

Q. In the Chicago area? A. In the Chicago area.

### 130 Recross Examination

Q. (By Mr. Dunau) Mr. Swanson, I believe you stated on Redirect Examination that the May 23rd agreement between the packer group and Local 710 was an agreement period; is that correct? A. I don't know that I said it was an agreement period. I said it was an agreement.

131 Q. Wasn't there a condition upon the acceptability of that agreement on May 23, 1961? A. Let

me tell you exactly what happened, and you can draw your own conclusions, because you are asking me to draw some. We made the proposal. The Union had attempted to revamp that proposal. They then had a caucus. They came back in, and I think it was Mike Healy who made the statement, he says that they had had this caucus, there had been a motion, it had been seconded, and had been voted on unanimously by the entire group to accept the Company's proposal, except for one thing, that if this same proposal wasn't acceptable to Wilson's, Armour's and Swift's, that the whole industry would be out in the street.

\*   \*   \*   \*   \*   \*   \*   \*

133

**Anthony Brent**

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

\*   \*   \*   \*   \*   \*   \*   \*

#### Direct Examination

Q. (By Mr. Ehrlich) Mr. Brent, by whom are you employed? A. Wilson and Company.

Q. And what is your job at Wilson and Company? A. I am Assistant Traffic Manager in charge of the trucking division in the General Traffic Department.

Q. And how long have you been so employed? A. Approximately eleven years.

Q. And are you familiar with the trucking operations of Wilson and Company? A. Yes, sir. I have supervision and control of Wilson and Company's motor carrier operations throughout the United States.

Q. Does Wilson and Company cause meat or meat products to be shipped into the City of Chicago from  
134 points outside the City of Chicago? A. Yes, sir.

Q. Are some of these points located outside of the State of Illinois? A. Yes, sir.

Q. Does Wilson and Company, in making such shipments from points outside the State of Illinois to points



within the City of Chicago, exclusively use Wilson and Company equipment? A. We do not use any Wilson and Company equipment.

• • • • •

Q. (By Mr. Ehrlich) How are such shipments of meat and meat products made? A. We ship them by contract, limited common, and common carriers.

Q. Are some of these shipments from out of state into the City of Chicago made to Wilson and Company customers within the City of Chicago? A. Yes, sir.

Q. Directly? A. Yes, sir.

Q. Would you be kind enough to name for us some of these customers of whom you have personal knowledge? A.

Kneip, South Chicago Packing, Dubuque Packing.

135 Well, there are numerous others, all the small receiving houses, and the large chains, such as A & P, National, Kroger.

Q. Does Wilson cause shipment—such shipments to be made directly to Central Meat? A. Central Meat, yes, sir.

Q. Illinois Packing? A. Yes, sir.

Q. Stockyards Packing? A. I don't recall.

Q. Ready Foods? A. Yes, sir.

Q. Packers Provision? A. No, sir.

Q. Roberts and Oats? A. Yes, sir.

Q. Allen Brothers? A. I don't recall.

Q. Carl Buddy? A. I don't recall.

Q. Rose Packing? A. Yes.

Q. Chicago Corn Beef? A. Yes, sir.

Q. Dubuque Packing? A. Yes, sir.

136 Q. High Grade? A. Yes, sir.

Q. Graver Packing? A. Yes, sir.

Q. Marhover? A. Yes, sir.

Q. E. Schwartz and Company? A. Yes, sir.

Q. Agar Packing? A. No, sir.

Q. Kosher Zion Sausage? A. Yes, sir.

Q. Cherry Meat Packers? A. I don't recall.

Q. Marquette Packing Company? A. Yes, sir.

Q. Silverman and Weckler? A. Yes, sir.

Q. H. L. Brown? A. I don't recall.

Q. Fred Oppenheimer? A. I don't recall.

Q. Pfaelzer Brothers? A. Yes, sir.

137 Q. John R. Harding? A. Yes, sir.

Q. Oscar Mayer? A. Yes, sir.

Q. Monarch Provision Company? A. Yes, sir.

Q. In making these deliveries to your customers in Chicago from points outside of the State of Illinois, do you use Frozen Food Express? A. Yes, sir.

Q. Belford Trucking Company, Inc.? A. No, sir.

Q. Refrigerated Transport Co., Inc.? A. Yes, sir.

Q. Trans-Cold Express, Inc.? A. No, sir.

Q. Watkins Motor Lines, Inc.? A. Yes, sir.

Q. Zero Refrigerated Lines? A. No, sir.

Q. Does Wilson and Company purchase meat or meat products in the City of Chicago? A. Yes, sir.

Q. And are these purchases made by Wilson and Company on occasion transported to points outside the State of Illinois? A. Yes, sir.

138 Q. Now, the list of carriers that we have just been over, do you use some or any of these for this purpose? A. Yes, sir.

Q. Are these pickups from people from whom you purchase meat or meat products in the City of Chicago made directly from their facilities here in Chicago? A. Yes, sir. We arrange for the transportation.

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139

Harry O. Matus

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

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#### Direct Examination

• • • • •

Q. By whom are you employed? A. Armour and Company.

Q. And in what capacity are you employed? A. Vice President, Transportation and Distribution.

Q. Are you familiar with the transportation and hauling operations of Armour and Company? A. I am.

Q. Does Armour and Company haul meat and meat  
140 products into the City of Chicago from points outside the State of Illinois? A. They do.

Q. Is this hauling operation done exclusively with Armour and Company equipment? A. Very little is done by Armour and Company's own equipment; something over ninety per cent is done by outside carriers.

Q. And will you tell us what kind of carriers these are? A. These consist of common and contract motor carriers.

Q. Do these carriers such as you have just described—strike that.

Will you describe the type of deliveries that these carriers such as you have just described make for Armour and Company from points outside the State of Illinois to points within the City of Chicago? A. These shipments consist of a truckload direct to an Armour facility or a truckload direct to a customer, or a combination of shipments, on one truck, with as many as four stops including the destination which involves, in some cases, all customers or a combination of our own facilities and customers on the same load.

Q. Now, would you be kind enough to name for us some of the customers of Armour and Company within the City

of Chicago to whom such shipments are made in the fashion you have just described? A. Such customers as A & P, the Tea Company, National Tea, Kroger, Jewell  
 141 Tea, Hi-Lo Foods, IGA Stores, and smaller packers such as Oscar Mayer, Kneip, High Grade, Illinois Meat Company and to some warehouses that the customers may select for storage of product for their account.

Q. Now, these carriers such as you have described, do they include Frozen Food Express? A. Yes.

Q. Belford Trucking Co., Inc.? A. No.

Q. Refrigerated Transport Co., Inc.? A. No.

Q. Trans-Cold Express, Inc.? A. Yes.

Q. Watkins Motor Lines, Inc.? A. No.

Q. Zero Refrigerated Lines? A. No.

Q. Does Armour and Company have contractual relations with any of these companies such as you have just described to facilitate their hauling operations to customers in Chicago? A. Armour and Company has contracts with contract carriers by name but not with these because these are common carriers, and no contract is necessary.

• • • • •

142 Q. (By Mr. Ehrlich) Does Armour and Company have contracts with carriers that deliver meat from points outside the State of Illinois to customers of Armour and Company within the City of Chicago? A. It does.

Q. Would you describe these types of contractual relations? A. The standard form of contract names the carrier on the one hand, Armour and Company as the shipper on the other, and specifies a quantity of meat and meat products to be transported over a period of time, usually one year or more. The quantity specified is usually not—does not usually exceed that normally transported in a much shorter period of time. It's a part of an agreement that must be consummated between the carrier and shipper of that type carrier.

Q. Do you use—when I say you, I mean Armour and Company, use common carriers regularly in the  
 143 course of a year for the type of operation we have been discussing? A. Yes. Most of the carriers transporting meat and meat products for us from outside the state are common carriers, and most of—not most in number but most in the amount of traffic they have are regularly used by us.

Q. Mr. Matus, are you the man who has the ultimate authority for the selection of those carriers to be used by Armour and Company in such operations? A. Yes. It's part of my responsibility.

Q. And will you tell us how you select these carriers? A. I have people who work for me to develop the number of carriers by name from a given shipping point with their authority, their rates, the type of equipment they have, and the service they hold themselves out to render to us, and from that information, select the better carriers to be regularly used.

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 W. C. Campbell

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

• • • • •  
 144 Direct Examination

• • • • •  
 Mr. Campbell, by whom are you employed?

A. Armour and Company.

Q. And in what capacity, sir? A. Manager of Labor Relations for its branch house division.

Q. And how long have you been employed in that capacity? A. Nine years.

Q. Would you tell us briefly what this entails? A. Well, I have the responsibility for, either personally or through supervision of others, negotiating all labor agreements for

the domestic branch houses, food service units, and hotel supply companies in the United States.

Q. Were you so occupied in this position during the past expired months of 1961? A. I was.

Q. I show you what is General Counsel's Exhibit No. 5, and ask you, sir, have you ever received a copy of that?

A. Yes, I have.

145 Q. Would you tell us when, sir? A. On April the 14th, 1961.

Q. Sir, in your position with Armour and Company, you engage—did you engage in negotiations with Local 710? A. I did.

Q. And did you have, in the course of these negotiations, an occasion to meet with the representatives or officials of Local 710? A. I did.

Q. Would you tell us when, sir? A. On May the 29th, 1961.

Q. Briefly, sir, tell us who was there for the Union? A. John T. O'Brien, Mr. Mike Healy were the two representatives from Local 710.

Q. At this time, sir, on this meeting of, you say, May 29th? A. Yes.

Q. At this meeting of May 29, could you tell us whether or not you, representing Armour and Company, and the officials of Local 710, discussed this document which is General Counsel's Exhibit No. 11? A. Yes, we did.

Q. Tell us, sir, what the discussion was with regard to this document? A. Well, we reviewed item by item the contents of the proposal including the Addendum which  
146 was attached to it, and, in substance, reached an area of substantial agreement on all the economic issues, but on the Addendum, we told the Union its was the opinion of our Law Department that such an instrument was illegal and as such, we could not agree to it under any circumstances. The Union made a request on one or two occasions that we sign the agreement including the Addendum, and each time we declined to do so.

Q. Now, by one or two occasions, you mean one or two occasions during the course of this meeting? A. During that meeting on May 29.

Q. Did you after the meeting on May 29, and prior to June 1, have any subsequent contacts with the officials of 710 with regard to the contract? A. No.

Q. I didn't get your answer. A. No, I did not.

Q. And are you able to tell us, sir, whether or not there was a strike of Armour and Company by members of Local 710 on June 1, 1961? A. There was a strike.

Q. And did the Local 710 members employed by Armour and Company refuse to work? A. They did.

Q. On June 1, 1961? A. They did, with one or two  
147 exceptions which was to deliver a product which  
had been ordered for hospitals and institutions;  
however, this type delivery was not authorized following  
June 1st.

Q. Are you saying, sir, that they only made these deliveries on June 1? A. One day, on June 1, 1961.

Q. Can you tell us, sir, when this strike ended? A. Well, the official end of the strike was on June 6. We brought some of the men back as we needed them because we didn't have products on hand to use all of them; on June 7, 8, and some the following Monday, which I believe was the 11th of June.

Q. Do you know, sir, whether or not there was picketing of any of the Armour plants and facilities? A. There was picketing.

Q. Could you tell us, sir, which ones or which plants and facilities of Armour? A. We had picketing at the three branch houses in the city known as the George Street Branch, the Englewood Branch, the South Chicago Branch. We had picketing at our 31st Street auxiliaries commonly known as the Soap Works; we had picketing at Pfaelzer Brothers which is a division of Armour, a supplier of hotels and restaurants. We did not have pickets, but the

men did not work at our Armour Chemical Company located at McCook, Illinois.

• • • • •

#### 148 Cross Examination

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Q. (By Mr. Dunau) Will you tell us what you stated with respect to the status of the economic issues on May 29, 1961, between Local 710 and Armour? A. I stated, I believe, that we had reached an area of substantial agreement on the economic issues, not including the Addendum.

Q. All right. Would you tell us what area of economic issues was in disagreement? A. I know of none, but in collective bargaining, we do not make a firm commitment until you have an entire package deal tied up.

Q. Well, did you have an agreement on May 29 of any kind? A. The Union said they would take back our offer to the members, but they were very insistent on the Addendum.

Q. On June 6, when a memorandum of agreement was executed, after the deliberations in Judge Perry's  
149 courtroom, what economic issues had been in dispute between Armour and Local Union No. 710 prior to the entry into this memorandum of agreement? A. First of all, I want to state I was not in Judge Perry's chambers when the agreement was reached on June 6.

• • • • •

Q. Do I understand you correctly, that you did not participate in the negotiations of June 6, 1961? A. That is correct.

• • • • •



151

**Donald B. Cameron**

called as a witness by and on behalf of Counsel for General Counsel, National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

\* \* \* \* \*

Q. (By Mr. Myatt) \* \* \*

Would you tell us by whom you are employed, sir?

A. Agar Packing Company.

Q. Is that within the City of Chicago? A. Chicago.

Q. And in what capacity, sir? A. Vice-president  
152 in charge of personnel and operations.

Q. How long have you been so employed? A. I have been with Agar since 1938.

Q. Now, sir, I direct your attention to May of 1961 and ask you if you engaged in any negotiations with Local 710 on behalf of Agar Packing Company? A. I did.

Q. Can you tell us, sir, whether or not as the result of these negotiations a contract was executed between Agar Packing and 710 during 1961? A. There was.

Q. When was that contract executed, sir? A. June 1, 1961.

Q. Now, sir, after the execution of this contract, will you tell us whether or not you had occasion to instruct any of your employees with regard to the method of Agar's shipments out of the City of Chicago? A. I did on the 2d day of June, 1961. I instructed our traffic manager that we had entered into an agreement with Local 710 of the Teamsters, wherein we agreed that we would use for shipments out of Chicago only those characters that were—carriers, rather—I suppose I could go either way—that were a party to the Central States over-the-road Teamster's agreements.

Q. Did that conclude your instructions to your traffic manager? A. Yes, I told him that this was our agree-

153 ment and that he should follow these instructions.

Q. That he should follow these instructions? A. That is right.

Q. Do you know, sir, whether or not your traffic manager did so follow your instructions?

\* \* \* \* \*

A. I subsequently learned that he had followed these instructions.

154 Q. Now, sir, there is a complaint in this case, in which the Watkins Motor Freight Company is listed as a charging party.

Did your traffic manager follow these instructions which you gave, with regard to Watkins Motor Freight?

Mr. Dunau: May I interpose an objection?

This witness has testified that he learned something from his traffic manager; he has been told something and he has related what he has been told. That is clearly hearsay.

Trial Examiner: Objection overruled. Proceed.

The Witness: Subsequent to these instructions, I learned from our traffic manager that he had told Watkins that he could not use them as a carrier because they were not members to one of these agreements.

Mr. Dunau: May I repeat the objection and ask that the answer be stricken as hearsay?

Trial Examiner: Of course this is hearsay, but this man has been identified as vice-president in charge of personnel and operations; and anything that came to him in the ordinary course of business is therefore an exception to the hearsay rule.

Mr. Dunau: Exception.

\* \* \* \* \*

155 Mr. Ryza: The proposed stipulation reads as follows:

If witnesses were called by counsel for General Counsel, they would testify as follows:

(1) Frozen Food, Belford, Refrigerated Transport, Trans-Cold, Watkins and Zero are each and all motor carriers, engaged in the interstate transportation of food, meat and meat products under a certificate or permit issued by the Interstate Commerce Commission.

During the past calendar year, a representative period, each of said motor carriers derived revenue in excess of \$50,000 from the interstate transportation of food, meat and meat products.

(2) Frozen Food, Belford, Refrigerated Transport, Trans-Cold, Watkins and Zero are now and have  
156 been at all times material to the proceedings in this case, individually and collectively, employers of employees other than truck drivers, in commerce within the meaning of Section 2(6) and (7) of the Act.

(3) General Counsel's Exhibits Nos. 16-A through 16-LLL, are true and correct copies of shipping orders and delivery receipts received by Frozen Food Express with respect to the shippers indicated on each such exhibit and evidence delivery of products thereon indicated to the consignees and at the locations thereon indicated.

(4) General Counsel's Exhibit No. 17 is a duly executed copy of a contract entered into between Frozen Food Express and the contractor thereon indicated, together with a certificate, Exhibit, and receipt pertinent thereto and shipments of meat and meat product were made into and out of the Chicago area, pursuant to said contract and other identical contracts with other contractors, during the calendar years 1960 and 1961.

(5) General Counsel's Exhibit No. 18-A through 18-F are true and correct copies of shipping orders and delivery receipts received by Refrigerated Transport Co., Inc., with respect to the shippers indicated on each such exhibit and evidence delivery of the products thereon indicated to the consignees and at the locations thereon indicated.

(6) General Counsel's Exhibit No. 19 is a duly executed copy of a contract entered into between  
157 Refrigerated Transport Co., Inc. and the contractor thereon indicated, together with a certificate, Exhibit and receipt pertinent thereto and shipments of meat and meat products were made into and out of the Chicago area pursuant to said contract and other identical contracts with other contractors during the calendar years 1960 and 1961.

(7) General Counsel's Exhibit No. 20-A through 20-U are true and correct copies of shipping orders and delivery receipts received by Belford Trucking Company, Inc., with respect to the shippers indicated on each such exhibits and evidence delivery of products thereon indicated to the consignees and at the locations thereon indicated.

(8) General Counsel's Exhibit No. 21 is a duly executed copy of a contract entered into between Belford Trucking Co., Inc., and the contractor thereon indicated, together with a certificate, Exhibit and receipt pertinent thereto and shipments of meat and meat products were made into and out of the Chicago area pursuant to said contract and other identical contracts with other contractors during the calendar years 1960 to 1961.

(9) General Counsel's Exhibit No. 22-A through 22-OO are true and correct copies of shipping orders and delivery receipts received by Watkins Motor Lines, Inc., with respect to the shippers indicated on each such exhibit and  
158 evidence delivery of products thereon indicated to the consignees and at the locations thereon indicated.

(10) General Counsel's Exhibit No. 23 is a duly executed contract entered into between Watkins Motor Lines, Inc., and the contractor thereon indicated, together with a certificate, exhibit and receipt pertinent thereto, and shipments of meat and meat products were made into and out of the Chicago area pursuant to said contract and other identi-

cal contracts with other contractors during the calendar years 1960 and 1961.

(11) General Counsel's Exhibit No. 24-A through 24-U are true and correct copies of shipping orders and delivery receipts received by Zero Refrigerated Lines with respect to the shippers indicated on each such exhibits and evidence delivery of products thereon indicated to the consignees and at the locations thereon indicated.

(12) General Counsel's Exhibit No. 25 is a duly executed copy of a contract entered into between Zero Refrigerated Lines and the contractor thereon indicated together with a certificate, Exhibit and receipt pertinent thereto, and shipments of meat and meat products were made into and out of the Chicago area pursuant to said contract and other identical contracts with other contractors during the calendar years 1960 and 1961.

(13) All shipments of meat and meat products into and out of the Chicago area, during the years 1960 and 1961 by Frozen Food, Refrigerated Transport, Belford, Watkins, and Zero were made pursuant to contracts with various contractors, the terms of which were substantially identical to those contained in General Counsel's Exhibits Nos. 17, 19, 21, 23, and 25.

• • • • •  
Trial Examiner: Mr. Ryza, you refer to a number of General Counsel's Exhibits.

Are these documents that are going to be offered into evidence along with the stipulation?

Mr. Ryza: Yes, I will not now offer the documents.

Trial Examiner: With the understanding that the stipulation covers the marking of those documents as identified in the stipulation as read, is that stipulation agreed to, gentlemen?

Mr. Dunau: We so stipulate, reserving however the question of the materiality of any of the matters stated in the stipulation or the exhibits identified in the stipulation.

Mr. Myatt: General Counsel so stipulates, embracing also the reservation that Mr. Dunau just made concerning materiality.

• • • • •

161 (The documents, heretofore marked General Counsel's Exhibits No. 18 through 25 for identification, were received in evidence.)

• • • • •

Mr. Isaacson: All parties have stipulated that Respondents' Exhibit marked for identification 2 and rejected is to be admitted in evidence—and this refers to the Swift & Company sales agreement for 1958; and they also stipulate that General Counsel's Exhibit marked for identification No. 26, the Swift & Company packing agreement of 1958, be admitted into evidence as well. We ask you to withdraw your earlier ruling rejecting Respondent's Exhibit No. 2, as part of the stipulation.

Trial Examiner: Is that stipulated to, gentlemen?

Mr. Myatt: It is so stipulated.

Mr. Dunau: So stipulated.

162 Trial Examiner: Insofar as Respondent's Exhibit No. 2, pursuant to the stipulation, I will withdraw my earlier ruling as requested in the stipulation and it will be admitted into evidence.

(The document, heretofore marked Respondent's Exhibit No. 2 for identification, was received in evidence.)

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Trial Examiner: General Counsel's Exhibit No. 26 is admitted into evidence pursuant to the stipulation.

• • • • •

163 Mr. Dunau: The parties have agreed to stipulate into evidence as Respondent's Exhibit No. 5, a document entitled "addendum to Agreement".

(Thereupon the document above referred to was marked Respondent's Exhibit No. 5 for identification.)

Mr. Dunau: As Respondent's Exhibit No. 6, a document entitled "Packinghouse Agreement for the Period May 1, 1961, to April 30, 1963."

(Thereupon the document above referred to was marked Respondent's Exhibit No. 6 for identification.)

Mr. Myatt: It is so stipulated.

Trial Examiner: Are those documents properly marked by the reporter?

Mr. Dunau: They are.

Trial Examiner: The stipulation is noted, accepted, and the documents are admitted into evidence pursuant to the stipulation.

• • • • •  
164 Mr. Dunau: The parties have agreed to stipulate as follows:

(1) On June 1, 1961, an agreement was entered into between the following employers and Local Union No. 710, identical to Respondent's Exhibit No. 5: Agar Packing Company; Hy Grade Food Products Corporation; W. Kneip; Oscar Mayer & Company, Inc.; Ross Packing Company, Inc.; South Chicago Packing Company, Inc.

(2) On June 1, 1961, agreement was entered into between the following employers and Local Union No. 710, identical to Respondent's Exhibit No. 5, except that the words "... will be delivered only to a city dock and not directly to a consignee and ..." were not deleted.

Trial Examiner: Where do they appear in this document? Is there a paragraph or something in the document that you can refer to?

Mr. Dunau: Yes, sir. The document as introduced on Respondent's Exhibit No. 5 has the words "... will be delivered only to a city dock and not directly to a consignee and ..." in the first paragraph of Respondent's Exhibit No. 5, with the deletion indicated on Respondent's Exhibit No. 5.

Trial Examiner: Thank you.

Mr. Dunau: (Continuing) Illinois Packing Company, J. R. Marhoefer, Inc.

(3) On June 2, 1961, an agreement was entered into between the following employers and Local Union No. 710, identical to Respondent's Exhibit No. 5: Silverman and Wexler, Allen Bros., Inc., Stockyards Packing Company.

(4) On June 2, 1961, an agreement was entered into between the following employers and Local Union No. 710, identical to Respondent's Exhibit No. 5, except that the words "... will be delivered only to a city dock and not directly to a consignee and ..." were not deleted: Oppenheimer Company, Marhoefer Packing Company, Central Meat Company, Dubuque Packing Company.

(5) On June 5, 1961, agreement was entered into between the following employers and Local No. 710, identical to Respondent's Exhibit No. 5. John P. Harding Market Company, Cherry Meat Packers, Inc.

(6) On June 6, 1961, at the time when a memorandum of agreement was reached with Armour, Swift & Wilson, in evidence as General Counsel's Exhibits Nos. 7, 12 and 14, by mutual agreement with all of the employers in the industry, with whom Local Union No. 710 had negotiated in 1961 including all the employers enumerated above, the union canceled all agreements which had been entered into between June 1, 1961 and June 5, 1961, and no agreements of the kind enumerated above remained in effect after that time.



166 At the same time, in addition to the agreements reached with Armour, Swift and Wilson, a new agreement was reached with all of the other employers in the industry, the terms of which are contained in Respondent's Exhibit No. 6.

Mr. Myatt: So stipulated by General Counsel.

Trial Examiner: The stipulation is noted on the record and accepted.

Mr. Dunau: For the purpose of clarity, I wish to state that Respondent's Exhibit No. 5 is a four-page document, the first page of which is entitled "Addendum to Agreement," the second page, "Article I. Validity Clause," the third page, "Employer Group Proposal," and the fourth page "Employer Group Proposal (Continued)."

• • • • •

Mr. Myatt: One final stipulation, Mr. Examiner:

It is stipulated and agreed, by the parties that the motor carriers listed in complaint No. 13-CC 265 and 13-CE 6, with the exception of Belford Trucking Company, Inc., that if representatives of these motor carriers were called, they would so testify that these carriers, with the exception of Belford Trucking Company, Inc., are not parties to any Central States or other over-the-road Teamsters motor freight agreement.

167 Trial Examiner: Is it so stipulated?

Mr. Dunau: We so stipulate.

For clarity, the carriers who are not parties to the Central States or other motor freight agreements are Frozen Food Express, Refrigerated Transport Company, Inc., Trans-Cold Express, Inc., Watkins Motor Lines, Inc., and Zero Refrigerated Lines.

Trial Examiner: The stipulation is noted and accepted.

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**John T. O'Brien**

called as a witness by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

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## 168 Direct Examination

Q. (By Mr. Dunau) Mr. O'Brien, what position do you hold with Local Union No. 710? A. I am secretary-treasurer.

Q. How long have you been secretary-treasurer? A. Since December, 1922.

Q. Mr. O'Brien, I show you a packinghouse agreement, Respondent's Exhibit No. 3, for the period of May 1, 1958, to April 30, 1961, and show you Article 12 on page 14 of that agreement.

(Document tendered.)

A. Yes, sir.

Q. Can you tell us how long Article 12 has been in the packinghouse agreements in the Chicago area? A. Approximately 20 years.

Q. Mr. O'Brien, as of May, 1958, which is the period when Respondent's Exhibit No. 3, the preceding packinghouse agreement came into effect—how many meat drivers were employed by Swift who were covered by the agreement with Local 710? A. Approximately 160.

Q. At the present time, how many meat drivers are employed by Swift who are covered by the agreement with Local 710? A. About 35 or 37.

169 Q. As of May, 1958, about how many meat drivers were employed by Armour who were covered by agreement between Local 710 and Armour? A. Approximately 118.

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Q. (By Mr. Dunau) At the present time, how many meat drivers are employed by Armour who are covered by the

agreement between Armour and Local 710? A. Approximately 37 men.

Q. As of May, 1958, how many meat drivers were employed by Wilson who were covered by the agreement between Wilson and Local 710? A. Approximately 55.

Q. At the present time, how many meat drivers are employed by Wilson who are covered by agreement  
170 between Local 710 and Wilson? A. Approximately  
six.

Q. What took place during the period between May 1958 and the expiration—and today, which caused this decrease in the employment of meat drivers by Armour, Swift and Wilson in the Chicago area?

• • • • •  
The Witness: In my opinion, the major packers after the 1958 contract close to the middle of the contract, began moving their operations out of Chicago proper into other large cities where they already had packinghouses established and gradually moved the operation. Every time they moved a big operation out, why, it reduced the work force. It reduced the inside workers and also reduced the drivers to the point they were no longer needed to make the pickups and deliveries in the Chicago area.

Q. Now, when deliveries are made from a plant facility of Swift, Armour, or Wilson in the Chicago area, are they  
made by meat drivers represented by Local 710?  
171 A. Yes.

Q. When deliveries are made within the Chicago area from plant facilities of Swift, Armour and Wilson located out of the city of Chicago, are they made by drivers represented by Local 710? A. No. The regulated common carrier that has his own established dock and hauls for the packers under a regulated setup—in that case, our member will make the city delivery. Otherwise, no.

Q. Otherwise, is delivery made by the over-the-road

driver directly to a customer of Armour, Swift or Wilson?  
A. Yes, sir.

• • • • •

Q. (By Mr. Dunau) When meat fabrication and processing was conducted by Armour, Swift, and Wilson in plants in Chicago, was the work of local delivery to customers within the Chicago area performed by drivers represented by Local 710? A. When meat was processed and fabricated in the Chicago area by the large packers, it was delivered by their own employees, members of our organization; yes, sir.

172 Q. Now, when Swift, Wilson and Armour relocated their facilities elsewhere, did that result in lessening the amount of sales of meat that they made in the Chicago area?

Mr. Isaacson: Objection.

Trial Examiner: I will sustain that objection.

Q. (By Mr. Dunau) Did you attempt to do something in 1961 negotiations about the loss of employment of meat drivers employed at Armour, Swift and Wilson? A. Yes.

Q. What did you attempt to do? A. We attempted to draft some language into the contract that would try and recover the jobs lost by the new policy of the larger packers of having their deliveries come in from out of the state into our area here by a road-driver that not only did the local driver's work, but absorbed the city jobs that at one time belonged to members of our organization, employees living here in the city of Chicago.

Q. How did you attempt to correct this situation? A. We drafted an addendum or language that we thought would be agreeable to the meat industry in this city and that they should have signed and let it become a part of the contract.

Q. What was there about the operation which would be changed as the result of this language, which would restore employment to meat drivers represented by Local 710? A.

Well, it would mean that the contract carrier or the  
 173 common carrier would deliver the meat to the pack-  
 er's plant or branch, or whatever facility he may  
 have for receiving it; and, in turn, our local man would  
 make the city deliveries of the product hauled in from the  
 various states outside of Illinois.

Q. Now, I show you the addendum exhibit, which appears  
 on page 24 of Respondent's Exhibit No. 6.

(Document tendered.)

Q. I ask you whether the purpose of that addendum was  
 to secure the work of local delivery within the Chicago area  
 for employees of Local 710—employees represented by  
 Local 710? A. Yes, sir.

• • • • •  
 Q. (By Mr. Dunau) I show you Respondent's Exhibit  
 No. 5, Mr. O'Brien, the addendum to the agreement, on  
 page 1, and ask you whether the same purpose was to be  
 served by that addendum?

(Document tendered.)

A. Yes, the same purpose was to be accomplished with  
 that addendum as with the one we now have in the contract.

Q. You will note the words in the first paragraph which  
 state, "... will be done by a certificated carrier who is a  
 party to the Central States over-the-road teamsters Motor  
 Freight Agreement."

174 I show you what I have marked as Respondent's  
 Exhibit No. 7 and ask you whether that is a copy of  
 the Central States over-the-road teamsters motor agree-  
 ment?

(Document tendered.)

A. Yes.

(Thereupon the document above referred to was marked  
 Respondent's Exhibit No. 7 for identification.)

• • • • •

Trial Examiner: Respondent's Exhibit No. 7 is admitted.

Q. (By Mr. Dunau) Will you explain, Mr. O'Brien, why the addendum to the agreement referred to the Central States over-the-road Teamsters Motor Freight Agreement?

A. Well, in the Central States over-the-road Motor Freight Agreement, there is a couple of clauses in there that protect the city, the local man in making city deliveries. In other words, it calls for all work performed in the city to be done by local pickup and delivery men.

Q. Can you identify in Respondent's Exhibit No. 7 the provisions of the agreement which perform that job?

175 A. (1) That would be Article 23 on page 35, pickup and delivery limitations is the clause that we were referring to.

Q. Is there another clause in this agreement which refers to the same problem? A. On page 69, Article No. 40, it refers to the same clause.

Q. Was it by virtue by these clauses in the Motor Freight Agreement that over-the-road shipments into Chicago by certificated carriers who are parties to the over-the-road motor freight agreement, would be required to make their delivery within the Chicago area to a dock, terminal, or other facilities? A. Yes, sir.

Q. When a shipment is made to a dock terminal or plant facility, is the further local delivery then made by drivers represented by Local 710? A. If it would be a packing house product, it would be delivered by 710 local drivers. If it had been any other type of freight, it would probably be delivered by a member of some other local union.

Mr. Dunau: We have no further questions.

#### Cross Examination

176 Q. What I am trying to get at, sir—and I do not want to belabor this point—is as to what is regulated,

as contrasted with the other carriers that you described as not being? A. A regulated carrier is a carrier, a contract carrier or common carrier—that has all the privileges of ICC permits and so forth.

Q. And these regulated carriers delivering into the Chicago area from the outside employ 710 members in the Chicago area? A. No. If they are hauling meat or packinghouse products, they would.

Q. This is not part of an ICC regulation, is it, sir? A. No. You asked if all of those that are members of the Central State Motor Freight Agreement—if they  
177 were hauling packinghouse products would be members of our local union in Chicago if they are delivering here.

Q. I think you misunderstood my question.

Mr. Myatt: Will you read the question, Mr. Reporter?  
(Question read.)

Q. (By Mr. Myatt) Is your answer still the same? A. If they were members of the Central State Motor Freight Association, I would say yes.

\* \* \* \* \*

178 Q. (By Mr. Myatt) Now, sir, with respect to Respondent's Exhibit No. 5, would the enforcement of the addendum as it is written here have changed the operation of carriers who were not parties to the Central States or other teamsters over-the-road agreement, delivering into the city of Chicago? A. In some respects, it would.

Q. Would you tell us in what respect, sir? A. Well, if he was a certificated carrier and a party to the Central States over-the-road motor freight agreement, he would be bound by the contract covering the Central States over-the-road motor freight, which calls for limousine pickup and deliveries.

Q. I do not think that was my question. I am speaking now as to carriers who are not parties.

Would this have changed their operation? A. Yes, he

would have been a certificated carrier, a member of the Central States Motor Freight Agreement.

Q. In other words, he would have had to be a party of the Central States Motor Freight Agreement? A. According to this addendum here, yes.

Q. And in the event that he was not a member or a party to such agreement, sir, would he have been able to  
179 haul meat or meat products into the Chicago area?

A. Well, it is a question of if the employer had signed the agreement. We would probably have worked out some type of agreement whether he would or not. We probably would allow them to go directly to their other plants.

Q. There would have been some restrictions on them?

A. Actually, the addendum is for restrictions to protect our people that lost their jobs.

Trial Examiner: Is my understanding of your testimony correct, Mr. O'Brien: The objective of this addendum—and I believe it is Respondent's Exhibit No. 5 we are talking about—the objection of that was to require all over-the-road carriers, regardless of whether any were signatories to Central States or not—the objective was to require them to deliver their produce to no place other than a dock and then local deliveries made from the dock by—

The Witness: Actually, no. Actually we were not doing business with over-the-road truckers. We were doing business with the major packing plants in the city of Chicago and we asked that they have the work done in such a fashion, that they have the loads delivered to facilities in the Chicago area and use the same operation that they had used for delivery in the city as they had when they had the packinghouses in Chicago, in place of delivering it directly to the customer around Chicago like they are doing today.

180 Q. (By Mr. Myatt) Now, sir, were you not also asking that they only make the deliveries into the Chicago area by over-the-road carriers who were signa-



tories to the Central States Agreement? A. We did not care how they got the deliveries into Chicago—by train, boat, or truck—as long as the local delivery men were members of our organization and we recovered the jobs we lost through the depression, so-called depression, of plants moving out of the area. It made no difference to us how the merchandise got here, as long as our people got the work.

\* \* \* \* \*

181 Q. (By Mr. Myatt) Now, sir, as to the over-the-road carriers who were not parties to the Central States or other teamsters' over-the-road agreements, would they be allowed to come into the Chicago area, delivering meat or meat products, without violating this contract?

Mr. Dunau: Which contract?

182 The Witness: Which contract are you talking about?

Q. (By Mr. Myatt) I am referring again, sir, to Respondent's Exhibit No. 5 which I just handed you a little while ago. I will hand it to you again.

(Document tendered.)

A. That is no longer in existence.

\* \* \* \* \*

183 Q. (By Mr. Myatt) Sir, you indicated that the meat packers were or had moved out of the Chicago area some period of time back; is that correct?

A. Yes, sir.

Q. And when did this first start, sir? A. Oh, I think it had been started back as late as 1955 on.

Q. 1955. Have these meat packers who have moved their packing plants outside of the Chicago area been continuously shipping into Chicago since that time? A. I'd say to my knowledge, yes.

\* \* \* \* \*

Q. (By Mr. Myatt) Have they always been shipping by trucking companies that are signatories to a teamster over-the-road agreement? A. Not always.

Q. So since 1955, then, sir, deliveries have been made in the Chicago area by other than signatories to a teamster over-the-road agreement? A. Yes.

Q. Since 1955, have these shipments been directly to customers of meat companies rather than to a central dock? A. Yes, sir.

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**General Counsel's Exhibit 1-X**

**ARTICLE XXXIII**

Livestock, meat and meat products for delivery by truck to a distance not exceeding fifty miles from the Chicago Stock Yards, whether to final distribution or point of transfer, shall be delivered by the Company in their own equipment, except where there is a lack of equipment at individual plants or branches, and then a cartage company whose truck drivers enjoy the same or greater wages and other benefits as provided in this agreement will be used. Employer agrees to do all possible to use its own equipment at all times.

---

**General Counsel's Exhibit 5**

**(Excerpts)**

**PROPOSED AMENDMENTS**

**TO**

**THE PACKING HOUSE AGREEMENT THAT IS NOW IN EFFECT BETWEEN OUR LOCAL UNION AND ALL EMPLOYERS THAT ARE ENGAGED IN DELIVERING AND PICKING UP OF PACKING HOUSE AND MEAT PRODUCTS IN THE AREA COVERED BY LOCAL UNION 710 JURISDICTION.**

This Contract is intended to cover a Bargaining Unit consisting of Meat and Packing House Drivers, Helpers,

Truck Spotters, Meat Loaders, Dump Car Drivers, Downer and Cripple Car Drivers, Livestock Haulers hauling out of the Chicago Area, Tank Drivers, Inter-Plant Drivers, and all drivers hauling Meat and Packing House By-Products, and Chemicals. Also, Delicatessen Special Delivery Drivers in the employ of large and small Meat Packers, Wholesalers, Sausage and Boning Plants, Local Cartage Companies, Over-The-Road Truck Lines, such as Private, Common, Contract Haulers, Freight Forwarders and Carloading Companies.

City or Local Work: The Restrictions Contained Herein on City or Local Work Will Be Applicable in the Chicago Area Wherever Our Jurisdiction Is Involved.

• • • • •  
**ARTICLE I. VALIDITY CLAUSE:**

It is the intent and purpose of this Agreement that any and all phases of the Labor-Management Relations Act of 1947 applicable to this Agreement shall be complied with, if legally valid. However, if in the event of this Agreement any article is found to be in conflict with such Act, as a consequence of such illegality, on the conflicting article and/or articles, of this Agreement shall be abrogated—all other terms and conditions to continue in full for the duration of this Agreement. In respect to any conflicting clause that is declared in conflict, the parties agree to negotiate, upon thirty (30) days notice, for a replacement clause.

• • • • •  
**ARTICLE XVI. JOB CLASSIFICATION JURISDICTION:**

The Employer agrees not to use road drivers, or city or suburban drivers to do any work, all work belonging exclusively under jurisdiction of Local No. 710 and, accord-

ingly, to be performed by present members of the Union or those to become members of the Union.

• • • • •

#### ARTICLE XXXIII. EXTRA EQUIPMENT:

Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equipment, except when there is a lack of equipment at individual plants or branches, and then a cartage company who employs members of Local No. 710 will be used. Employer agrees to do all possible to use own equipment at all times.

• • • • •

#### ARTICLE XXXVI. SUBCONTRACTING:

(a) The Employer agrees to refrain from using the services of any person who does not observe the wages, hours and conditions of employment established by Labor Unions having jurisdiction over the type of services performed.

(b) For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that no work or services presently performed or hereafter assigned to the collective bargaining unit will be subcontracted, transferred, leased, assigned or conveyed in whole or in part to any other Company, branch, or unit, person or non-unit employees, unless otherwise provided in this Agreement. The Employer may subcontract work when all of his regular employees are working.

• • • • •

General Counsel's Exhibit 6

EMPLOYER GROUP PROPOSAL

Former AGREEMENT with the changes as outlined below:

1. Two year contract, expiration date May 1, 1963.

2. WAGES

(A) 10¢ per hour increase, effective 5/1/61.

(B) New classification Tractor Driver over ten ton add 5¢ per hour, effective 5/1/61.

(C) 8¢ per hour increase, effective 5/1/62.

(D) Clarify definition of Long Haul classification by adding to present language: "Normally 12 hours or over" No city deliveries.

3. HEALTH & WELFARE

Increase currently to \$3.00 per week.

4. VACATIONS

(A) Revise to provide (1) weeks vacation for one (1) year: two (2) weeks for three (3) years: three (3) weeks for ten (10) years and four (4) weeks for twenty-five (25) years, effective 1961.

(B) Eliminate the first sentence of the second paragraph on page twelve and substitute the following:

"It is understood that during the first year of employment the man must work 60% of the total working days in order to obtain his vacation and must have been employed for the full year. During the second and subsequent years the man must have worked 60% of the total working days of the year."

#### 5. COST OF LIVING

Continue on same basis but incorporate the 21¢ per hour increment into the base rate. Establish new base at 127.3 under new agreement.

#### 6. PENSIONS

Effective on date to be negotiated for change over, employer to make contribution of \$3.00 per week. Effective May 1, 1962, contribution to be increased to \$4.00 per week.

#### 7. HOLIDAYS

Continue Washington's Birthday and Veterans' Day as paid holidays and write language to provide that these two holidays will be celebrated on an individual employee basis, the dates to be mutually agreed on between the employee and the Company.

8. The attached to be made an Addendum to the new agreement.

### ADDENDUM TO AGREEMENT

It is agreed by and between the employer and the union that the following addendum shall be a part of the collective bargaining agreement in effect between the employer and the union. The employer agrees that all meat and meat products which originate with the employer for truck shipment into and out of the Chicago city limits will be done by a certificated carrier who is a party to the Central States or other Over-The-Road Teamster Motor Freight Agreement.

All local overflow cartage shipments of meat and meat products originating with the employer in Chicago will be transported by cartage companies who are parties to the collective bargaining agreement referred to above.

Company owned or company leased equipment is exempt from this addendum except that employer over-the-road drivers will not be permitted to make retail store door deliveries within the Chicago city limits. Leased equip-

ment leased directly to the company will be considered the same as employer owned equipment.

.....  
 Company Union  
 .....  
 Date

### ADDENDUM TO AGREEMENT

It is mutually agreed between the employer signators to this agreement and Local Union 710 that all meat and meat products which originate with the employer for truck shipment into and out of the Chicago City limits will be done by a Certificated Carrier signators to the Central States or other Over-the-Road Teamster Motor Freight Agreement.

It is also agreed that all local overflow cartage shipments of meat and meat products originating with the employer in Chicago will be done by cartage companies which are signators to this agreement.

Company owned or Company leased equipment is exempt from this addendum, except Company over-the-road drivers will not be permitted to make retail store door delivery within the Chicago City limits. Leased equipment leased directly to the Company will be considered as Company owned equipment.

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### General Counsel's Exhibit 8 (Second Part)

### STRIKE SETTLEMENT AGREEMENT

This STRIKE SETTLEMENT AGREEMENT is made by and between Meat and Highway Dockmen Helpers and Miscellaneous Truck Terminal Employees Local Union No. 710, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter called the "Union") and Swift & Company Meat Packing Plant, Chicago, Illinois (hereinafter called the "Company").

1. The Union agrees on behalf of itself and its members, except as specifically provided otherwise below, that it shall not engage in a strike, stoppage, slowdown or other suspension of work, or picketing, regarding the provision hereto annexed and marked "Exhibit A" (Not the subject of charges before the National Labor Relations Board), or any variation thereof.

2. The Company agrees that if and when a decision of the National Labor Relations Board or (in the event that such decision of the National Labor Relations Board is the subject of appellate review within sixty (60) days of such decision) a final determination by a court of last resort concludes that "Exhibit A" is valid, it shall, upon thirty (30) days' notice in writing from the Union, bargain collectively regarding the subject matter of the aforesaid "Exhibit A".

3. In the event that there is a final determination by a court of last resort that the aforesaid "Exhibit A" is valid, and, thereafter, the parties (the Company and the Union) fail to reach an agreement regarding the subject matter referred to in "Exhibit A", the Union may engage in a strike and the Company may engage in a lockout with reference thereto.

IN WITNESS WHEREOF, the parties have executed this Strike Settlement Agreement at Chicago, Illinois, as of June 6, 1961.

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, LOCAL UNION No. 710

.....  
Aug. 28th, 1961

SWIFT & COMPANY MEAT PACKING  
PLANT, CHICAGO, ILLINOIS  
C. J. MURRAY  
*Superintendent*



EXHIBIT A  
ADDENDUM

It is agreed by and between the Employer and the Union that the following addendum shall become a part of the collective bargaining agreement entered into between the Employer and the Union.

The Employer agrees that all meat and meat products which originate with or are processed or sold by the Employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer by employees covered by this agreement. It is specifically understood that all deliveries to customers or consignees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement.

In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the Chicago city limits, it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

This addendum shall not in any way be construed to diminish the description of the work covered by this agreement as set forth in any provision of this agreement.

General Counsel's Exhibit 11

EMPLOYER GROUP PROPOSAL

Former AGREEMENT with the changes as outlined below:

1. Two year contract, expiration date May 1, 1963.

2. WAGES:

(a) 10¢ per hour increase, effective 5/1/61.

(b) New classification Tractor Driver over ten ton add 5¢ per hour, effective 5/1/61.

(c) 8¢ per hour increase, effective 5/1/62.

(d) Clarify definition of Long Haul classification by adding to present language: "Normally 12 hours or over" No city deliveries.

3. HEALTH & WELFARE:

Increased currently to \$3.00 per week.

4. VACATIONS:

(a) Revise to provide one (1) weeks vacation for one (1) year; two (2) weeks for three (3) years; three (3) weeks for ten (10) years and four (4) weeks for twenty-five (25) years, effective 1961.

(b) Eliminate the first sentence of the second paragraph on page twelve and substitute the following:

"It is understood that during the first year of employment the man must work 60% of the total working days in order to obtain his vacation and must have been employed for the full year. During the second and subsequent years the man must have worked 60% of the total working days of the year.

#### 5. COST OF LIVING:

Continue on same basis but incorporate the 21¢ per hour increment into the base rate. Establish new base at 127.3 under new Agreement.

#### 6. PENSIONS:

Effective on date to be negotiated for change over, Employer to make Contribution of \$3.00 per week. Effective May 1, 1962, Contribution to be increased to \$4.00 per week.

#### 7. HOLIDAYS:

Continue Washington's Birthday and Veterans' Day as paid holidays and write language to provide that these two holidays will be celebrated on an individual employee basis, the dates to be mutually agreed on between the employee and the Company.

8. The attached to be made an Addendum to the new Agreement.

### ADDENDUM TO AGREEMENT

It is mutually agreed between the employer signators to this agreement and Local Union 710 that all meat and meat products which originate with the employer for truck shipment into and out of the Chicago City limits will be done by a Certificated Carrier signators to the Central States or other Over-the-Road Teamster Motor Freight Agreement.

It is also agreed that all local overflow cartage shipments of meat and meat products originating with the employer in Chicago will be done by cartage companies which are signators to this agreement.

Company owned or Company leased equipment is exempt from this addendum, except Company over-the-road drivers will not be permitted to make retail store door delivery within the Chicago City limits. Leased equipment leased

directly to the Company will be considered as Company owned equipment.

---

**General Counsel's Exhibit 13**

(Excerpts)

**ARTICLES OF AGREEMENT**

The Company, hereinafter referred to as the Employer, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 710, hereinafter referred to as the Union, agree to be bound by the following terms and provisions covering wages and working conditions:

---

**ARTICLE XII**

1. Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the Company in their own equipment except when there is a lack of equipment at individual plants or branches, and then all effort will be made to contract a cartage company who employs members of Local No. 710. Employer agrees to do all possible to use own equipment at all times.

2. On deliveries to suburban points within the 50 mile zone, Common or Contract Haulers will be used only when no regular delivery service by the company's own trucks is maintained to such points. When deliveries are made on other than regular schedule delivery days, it is agreed that Common or Contract Haulers can deliver not to exceed 1,000 pounds on such days.

3. The above does not apply to express or railway pick-up by express company or railway company trucks. No pick-up by terminal company is to be reloaded into over-

land or over-the-road trucks unless destination is beyond the 50 mile zone. This applies only to those plants, or branches, who at present are operating under Local No. 710 contract.

• • • • •

In witness whereof, the parties have executed this Agreement at Chicago, Illinois, this 8th day of August, 1961.

WILSON & Co., Inc.

By M. R. SWANSON

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF  
AMERICA, LOCAL UNION No. 710

By JOHN T. BREEN  
*Secy. Treas.*

## General Counsel's Exhibit 16-I

FROZEN FOOD EXPRESS, ★ P. O. BOX 5888 - DALLAS 22, TEX.

SHIPPING DATE 1-17-61  
BILLING DATEBILL NO.  
BILLING STATION DALLAS

CONSIGNEE:

Armour & Company  
1016 Commerce St  
Houston, Texas

SHIPPER:

Illinois Packing Co.  
Chicago, IllinoisI.C.C. REGULATIONS REQUIRE THAT FREIGHT BILLS MUST BE PAID WITHIN 7 DAYS  
WAYBILL NUMBER

NO. OF	DESCRIPTION OF ARTICLES	WEIGHT	RATE	FREIGHT	PREPAID	COLLECT
263	Chice arm Choke	24697				
<i>Armour &amp; Co</i> <i>J. Moore</i> <i>Sub #8935 + 8953 in fact</i> <i>Arrived 7 AM</i> <i>Left 5 PM</i> <i>Ship the Sure Way</i>						

• SHIP THE SURE WAY •

• ALL MECHANICALLY REFRIGERATED TRUCK LINE •

DIRECT SERVICE BETWEEN ARKANSAS, CALIFORNIA, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, NEBRASKA, NEW MEXICO, OHIO, OKLAHOMA, TENNESSEE, TEXAS, AND WISCONSIN.

## General Counsel's Exhibit 16-M

FROZEN FOOD EXPRESS, ★ P. O. BOX 5888 - DALLAS 22, TEX.

SHIPPING DATE 8 4 61  
BILLING DATEBILL NO.  
BILLING STATION: DALLAS

CONSIGNEE:

Modern Transfer and Delivery Service  
2514 Spring St  
Houston, Texas

SHIPPER:

Stock Yard Packing  
Chicago, IllI.C.C. REGULATIONS REQUIRE THAT FREIGHT BILLS MUST BE PAID WITHIN 7 DAYS  
WAYBILL NUMBER

NO. OF	DESCRIPTION OF ARTICLES	WEIGHT	RATE	FREIGHT	PREPAID	COLLECT
69	ctns					
13	bbis					
2	bxs					
2	Pkg Fresh Meats					
56	ctns					
1	keg Cured Meats					
395	ctns Cheese					
<i>Modern Delivery Service</i> <i>John H. Jackson</i> <i>18154</i> <b>FOR DELIVERY ONLY</b> <b>PREPAID</b>						

• SHIP THE SURE WAY •

• ALL MECHANICALLY REFRIGERATED TRUCK LINE •

DIRECT SERVICE BETWEEN ARKANSAS, CALIFORNIA, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, NEBRASKA, NEW MEXICO, OHIO, OKLAHOMA, TENNESSEE, TEXAS, AND WISCONSIN.

## General Counsel's Exhibit 16-Q

CYRUS B. WELLER

OLD SERVICE - WARM COURTESY

STONEY M. STUBBS

## FROZEN FOOD EXPRESS

P. O. BOX 3885  
DALLAS, TEXASTHE ORIGINAL ALL MECHANICALLY REFRIGERATED TRUCK LINE  
SERVING ALL POINTS IN TEXAS

SHIPPING DATE

8-4-61

BILLING  
STATION

DALLAS

DATE

FREIGHT  
BILL NO

CONSIGNEE

Commissionary Officer  
Fort. Hood  
Killeen, Texas

SHIPPER

Agar Packing Co.  
410 57 S. Union Ave.  
Chicago, Illinois

THERE ARE FREIGHT CHARGES PAYABLE ON PRESENTATION

WAYBILL FROM

WAYBILL REFERENCE

77405

POLICE NO.

NO. PACKAGES

DESCRIPTION OF ARTICLES

WEIGHT

RATE

FREIGHT

ADVANCED  
FREIGHT

PREPAID

85 Boxes meat

9,118

Prepaid

Temperature O.K.

All seals intact

+40  
F

M. O. P. &amp; S.

TOTAL COLLECT

DIRECT SERVICE ARKANSAS, CALIFORNIA, OKLAHOMA, MISSOURI, LOUISIANA, MISSISSIPPI, ILLINOIS, MICHIGAN, AND KENTUCKY  
ON MOVEMENTS TO AND FROM TEXAS

REFRIGERATOR SERVICE

## General Counsel's Exhibit 16-T

CYRUS B. WELLER

OLD SERVICE - WARM COURTESY

STONEY M. STUBBS

## FROZEN FOOD EXPRESS

P. O. BOX 3885  
DALLAS, TEXASTHE ORIGINAL ALL MECHANICALLY REFRIGERATED TRUCK LINE  
SERVING ALL POINTS IN TEXAS

SHIPPING DATE

3-1-61

BILLING  
STATION

DALLAS

DATE

FREIGHT  
BILL NO

3-3-61

CONSIGNEE

SCOBAY FIREPROOF STORAGE CO. INC.  
315 N. MEADINE  
SAN ANTONIO TEXAS

SHIPPER

CHERRY MEAT PACKERS  
Chicago Ill

THERE ARE FREIGHT CHARGES PAYABLE ON PRESENTATION

WAYBILL FROM

WAYBILL REFERENCE

FFE 82

NO. PACKAGES

DESCRIPTION OF ARTICLES

WEIGHT

RATE

FREIGHT

ADVANCED  
FREIGHT

PREPAID

207 CTNS FROZ CURED SAUSAGE

13,301

IN

OUT

1961 MAR 3 PM 2 43

For del only - Prepaid

FIREPROOF STORAGE CO. INC.

DIRECT SERVICE ARKANSAS, CALIFORNIA, OKLAHOMA, MISSOURI, LOUISIANA, MISSISSIPPI, ILLINOIS, MICHIGAN, AND KENTUCKY  
ON MOVEMENTS TO AND FROM TEXAS

## Refrigerated.

Transport Inc. \_\_\_\_\_ of Texas

Only

CONSIGNEE  
ROEGELEIN PKE  
1700 S BRAZOS  
SAN ANTONIO, TEX

SHIPPER  
FRED OPPENBEINER  
CHICAGO, ILL

pi.  
L21732  
DSA-18847

FFE DALLAS: RT10 EST

The agent of infection was an unknown.

AGENT MUST SIGN THE ORIGINAL BILL OF LADING

**Permanent postoffice address of shipper.**

**FROZEN FOOD EXPRESS** ★ P. O. BOX 5888 - DALLAS 22, TE.

DATE  
BILLING  
DATE

BILL NO.

BILLING STATION: DALLAS

CONSIGNEE:  
The Kroger Company  
2330 Frisco  
Memphis, Tennessee

SHIPPER •  
Hygrade Food Products Corp.  
Chicago, Illinois

ICC REGULATIONS REQUIRE THAT FREIGHT BILLS MUST BE PAID WITHIN 7 DAYS

708 to dist.

708 to dest.		WEIGHT	RATE	FREIGHT	PREPAID	COLLECT
11 CS.	24/3 Sm SI Beef	55				
211 CS.	24/5 SI Ckd Ham	1890				
11 CS.	24/4 Corned Beef	70				
		<u>2015</u>				
REFG. TO 33 DEGS. F. FOR DELIVERY ONLY						
PREPAID						

*K. J. [Signature]*

• SHIP THE SURE WAY •

• ALL MECHANICALLY REFRIGERATED TRUCK LINE •

DIRECT SERVICE BETWEEN ARIZONA, CALIFORNIA, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, NEBRASKA, NEW MEXICO, OHIO, OKLAHOMA, TENNESSEE, TEXAS, AND WISCONSIN.



## General Counsel's Exhibit 16-GG

FROZEN FOOD EXPRESS ★ P. O. BOX 5888 - DALLAS 22, TE.

 SHIPPING  
 DATE 10 3 61  
 BILL NO  
 BILLING STATION DALLAS

C 1301

CONSIGNEE

 THE GOURMET CO  
 4120 PARRY  
 DALLAS, TEXAS

SHIPPER

 JOHN P. HARDING MARKET CO  
 CHICAGO, ILL.

I.C.C. REGULATIONS REQUIRE THAT FREIGHT BILL'S MUST BE PAID WITHIN 7 DAYS

 NO. 3 CS PICKLED MEAT 502  
 FFE 716 TO DLS  
 FFE 757 TO DEST

FOR DEL ONLY FRT PPD

• SHIP THE SURE WAY •

• ALL MECHANICALLY REEFERATED TRUCK LINE •

CHICAGO, ILL. TO: ALABAMA, ARIZONA, ARKANSAS, CALIFORNIA, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, NEBRASKA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, VERMONT, VIRGINIA, WISCONSIN, WYOMING.

## General Counsel's Exhibit 16-QQ

 This Shipping Order must be legibly filled in, in Ink, in Indelible Pen, or in  
 Carbon, and retained by the Agent.

Frozen Food Express

Shipper's No. 40403

Carrier's No.

RECEIVE, subject to the conditions and tariffs in effect on the date of the issue of this Shipping Order,

at Chicago, Illinois, 8/29/61 19 from ALLEN BROTHERS, INC.

Consigned to Robert Driscoll Hotel

Destination Corpus Christi,

State Texas

County

Delivery Address

Route

Delivering Carrier Frozen Food Express

Car or Vehicle Initials

No.

NO. PACKAGES	KIND OF PACKAGE, DESCRIPTION OF ARTICLES, SPECIAL MARKS AND DESCRIPTION	WEIGHT (Subject to Convention)	CLASS OR RATE	CHG. COL.
1	Boxes, Fresh Meat			
1	Boxes, Fresh Meat	374		

 Subject to Section 7 of conditions of applicable bill of lading, if the shipment is to be delivered to the consignee without receipt on the carrier's bill, the carrier shall sign the following statement:  
 The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

If charges are to be prepaid, write up stamp here, "To Be Prepaid."

TO BE PREPAID

Collect On Delivery

and remit to

C. O. D. Charge

to be paid by

Shipper

Consignee

We hereby certify that the following described goods are not food products which are offered for shipment in interstate or foreign commerce have been U. S. inspected and passed by the Dept. of Agriculture, and are as labeled and packed.

ALLEN BROTHERS, INC.

If the shipment moves between two points by a carrier by water, the law requires that the bill of lading shall state who that is, carrier's or shipper's receipt.

NOTE—Where the rate is dependent on weight, shippers are required to weigh accurately in writing the gross or declared value of the property.

The gross or declared value of the property is hereby specifically stated by the shipper to be not exceeding

ALLEN BROTHERS, INC., Shipper

Per

Permanent post-office address of shipper—3737 South Halsted St., Chicago, Illinois

Agent Must Sign and Retain this Shipping Order and

Mark on the Freight Bill of Lading

## General Counsel's Exhibit 16-RR

Refrigerated

SHIPPING DATE 2 Oct 61

Transport Inc. of Texas

For Del.

P. O. Box 5382 - Dallas, Texas

Only

## CONSIGNEE

VETS ANNU Hosp  
2002 HOLCOMBE  
HOUSTON, TEX

## SHIPPER

ALLEN BROS INC  
CHICAGO, ILL

THESE ARE FREIGHT CHARGES. PAYABLE ON PRESENTATION

EFF DALLAS: R TIDEST

CONNECTING LINE REFERENCE		WAYBILL REFERENCE		POLIC NO		TR 7258		RTI					
NO. PACKAGES		DESCRIPTION OF ARTICLES		WEIGHT		RATE		FREIGHT		ADVANCES FREIGHT		PREPAID	
5		BOX FRESH MEAT FROZEN		250									
												TOTAL COLLECT	

## General Counsel's Exhibit 16-WW

FROZEN FOOD EXPRES \* P. O. BOX 5888 - DALLAS 22, TEXASSHIPPING DATE Aug 30, 1961  
BILL NO. 21931  
BILLING STATION: DALLAS

## CONSIGNEE\*

Burnett Meat Co.,  
1400 E. 2nd Street,  
Kansas City, Mo.

## SHIPPER \*

Central Meat Co.,  
824 W. 38th Place,  
Chicago, Illinois.

I.C.C. REGULATIONS REQUIRE THAT FREIGHT BILLS MUST BE PAID WITHIN 7 DAYS

NO. PKGS.	DESCRIPTION OF ARTICLES	WEIGHT	RATE	FREIGHT	PREPAID	COLLECT
4	bbls Fresh Meat	1222				
18	bxs Fresh Meat	2269½				
22	total pieces	3491½				
33 degrees						
FOR DELIVERY PURPOSES ONLY						
Burnett Taylor						

\* SHIP THE SURE WAY \*

\* ALL MECHANICALLY REFRIGERATED TRUCK LINE \*

DIRECT SERVICE BETWEEN ARKANSAS, CALIFORNIA, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, NEBRASKA, NEW MEXICO, OHIO, OKLAHOMA, TENNESSEE, TEXAS, AND WISCONSIN.

## General Counsel's Exhibit 16-XX

FROZEN FOOD EXPRES. ★ P. O. BOX 5888 - DALLAS 22, TEXAS

SHIPPING DATE 6-3-61

BILLING DATE

BILL NO. 22539

BILLING STATION DALLAS

CONSIGNEE -  
ARMOUR & CO.,  
1400 E 2ND ST  
MINNEAPOLIS CITY MOSHIPPER -  
GENERAL TRUCK CO  
\$110.00 FREIGHTI.C.C. REGULATIONS REQUIRE THAT FREIGHT BILLS MUST BE PAID WITHIN 7 DAYS  
WAYBILLED FROM

NO. OF	DESCRIPTION OF ARTICLES	WEIGHT	RATE	FREIGHT	PREPAID	COLLECT
12	MEAT	1691		TED		
	FOR DELIVERY					

• SHIP THE SURE WAY •

• ALL MECHANICALLY REFRIGERATED TRUCK LINE •

DIRECT SERVICE BETWEEN ARKANSAS, CALIFORNIA, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, NEBRASKA, NEW MEXICO, OHIO, OKLAHOMA, TENNESSEE, TEXAS, AND WISCONSIN.

## General Counsel's Exhibit 16-III

FROZEN FOOD EXPRES. ★ P. O. BOX 5888 - DALLAS 22, TEXAS

SHIPPING DATE 6-7-61

BILLING DATE 6-12-61

BILL NO. 5215 JRR.

BILLING STATION: DALLAS

CONSIGNEE -  
ARMOUR & Co.  
1016 COMMERCE ST.  
HOUSTON, TEXASSHIPPER -  
MARMAEFER PACKING CO.  
CHICAGO, ILL.  
523 W. Fulton StI.C.C. REGULATIONS REQUIRE THAT FREIGHT BILLS MUST BE PAID WITHIN 7 DAYS  
WAYBILLED FROM

NO. OF	DESCRIPTION OF ARTICLES	WEIGHT	RATE	FREIGHT	PREPAID	COLLECT
276	HANGING MEAT	25324	2.59			657.45
	A/R 114.23 INC.	114.23				

• SHIP THE SURE WAY •

• ALL MECHANICALLY REFRIGERATED TRUCK LINE •

DIRECT SERVICE BETWEEN ARKANSAS, CALIFORNIA, ILLINOIS, INDIANA, IOWA, KANSAS, KENTUCKY, LOUISIANA, MICHIGAN, MINNESOTA, MISSISSIPPI, MISSOURI, NEBRASKA, NEW MEXICO, OHIO, OKLAHOMA, TENNESSEE, TEXAS, AND WISCONSIN.

## General Counsel's Exhibit 17

## EXHIBIT A

The CONTRACTOR warrants that the following described equipment conforms to and meets the requirements of all applicable Federal and State laws and rules and regulations of the Interstate Commerce Commission and State authorities:

## TRACTOR:

Make Mack      Year 1959 Model  
 Serial No. G73LT 1061      Motor No. Texas - 8U 9851  
 Co. No.      License No.

## TRAILER:

Make      Year  
 Serial No.      Length  
 Rails      Type of Unit  
 License No.

J. D. NEARN

*Contractor Frozen Food Express*

JOY KINCANON

*Carrier*

Joy Kincanon - Agent

August 24, 1959

Date

---

 CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

This is to certify that the following described equipment:

TRACTOR: Make Mack Year 1959 Model ..... Motor  
 No. NH220 231900 Serial No. G73LT 1061 Company No.  
 141 License No. 8U 9851 Texas

TRAILER: Make ..... Year ..... Serial No.  
 ..... Length ..... Rails? ..... Type Of

## RECEIPT

(Name and address of Carrier) Frozen Food Express acknowledges receipt of the following equipment on August 21, 1959 at Dallas at 11:00 AM to be used by J. D. Nearn in the performance of its contract with the aforesaid CARRIER entered into this even date:

TRACTOR: Make Mack Year 1959 Model .....  
Serial No. G73LT 1061 Motor No. NH220 231900 Co. No.  
141 License No. 8U 9851 Texas

TRAILER: Make ..... Year ..... Serial  
No. .... Length ..... Rails?.....  
Type Unit ..... License No. ....

J D NEARN Contractor  
FROZEN FOOD EXPRESS  
JOY KINCANON Carrier  
Joy Kincanon—Agent

---

This AGREEMENT made this 24 day of August, 1959 between Frozen Food Express, Dallas, Texas, hereinafter referred to as Carrier, and J. D. Nearn of 1004 Sunnyside, Dallas, hereinafter referred to as Contractor.

## WITNESSETH:

WHEREAS the CARRIER is a common carrier by motor vehicle engaged in the transportation of commodities under certified authority from the Interstate Commerce Commission, and

WHEREAS the CONTRACTOR is engaged in the business of transporting freight by motor vehicle pursuant to contract with private, contract or common carriers or shippers, and,

WHEREAS the CARRIER desires to enter into an agreement with the CONTRACTOR for the transportation of certain commodities as may be provided by the CARRIER and the CON-



## General Counsel's Exhibit 17

## EXHIBIT A

The CONTRACTOR warrants that the following described equipment conforms to and meets the requirements of all applicable Federal and State laws and rules and regulations of the Interstate Commerce Commission and State authorities:

## TRACTOR:

Make Mack      Year 1959 Model  
 Serial No. G73LT 1061      Motor No. Texas - 8U 9851  
 Co. No.      License No.

## TRAILER:

Make      Year  
 Serial No.      Length  
 Rails      Type of Unit  
 License No.

J. D. NEARN

*Contractor Frozen Food Express*

Joy KINCANON

*Carrier*

Joy Kincanon - Agent

August 24, 1959

Date

---

 CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

This is to certify that the following described equipment:

TRACTOR: Make Mack Year 1959 Model ..... Motor  
 No. NH220 231900 Serial No. G73LT 1061 Company No.  
 141 License No. 8U 9851 Texas

TRAILER: Make ..... Year ..... Serial No.  
 ..... Length ..... Rails? ..... Type Of

Unit ..... License ..... owned by  
 (Name And Address Of Owner) .....  
 is being operated by (Name And Address Of Carrier)  
 Frozen Food Express under a contract dated (month)  
 August (day) 21, 1959, for a period of time beginning this  
 date and continuing thereafter until said contract of  
 (month) August (day) 21, 1959, shall be completed or can-  
 celled.

This certificate shall be considered as valid and in force  
 and effect so long as it is in the possession of said owner,  
 his agent, servant and employee unless notice of cancella-  
 tion hereof has been filed with the State Board, Commission,  
 or official (or the Governor if there is no such Board, Com-  
 mission or official) having jurisdiction over the business of  
 transportation by motor vehicle of each state in which  
 (Name Of CARRIER) Frozen Food Express operates.

The commodities to be transported are restricted to those  
 commodities said (Name Of CARRIER) Frozen Food Express  
 is authorized to transport under its certificate authority  
 received from the Interstate Commerce Commission, and  
 any and all commodities the transportation of which re-  
 quire no such certificate authority.

The original of the contract of (month) August (day) 21,  
 1959 is kept at the office of the office of (Name Of CARRIER)  
 Frozen Food Express at (Address Of CARRIER) 318 Cadiz

DATED this 21 day of August, 1959.

FROZEN FOOD EXPRESS  
 JOY KINCANON  
 Joy Kincanon Carrier Agent  
 J D NEARN Owner



## RECEIPT

(Name and address of Carrier) Frozen Food Express acknowledges receipt of the following equipment on August 21, 1959 at Dallas at 11:00 AM to be used by J. D. Nearn in the performance of its contract with the aforesaid CARRIER entered into this even date:

TRACTOR: Make Mack Year 1959 Model .....  
Serial No. G73LT 1061 Motor No. NH220 231900 Co. No.  
141 License No. 8U 9851 Texas

TRAILER: Make ..... Year ..... Serial  
No. .... Length ..... Rails?.....  
Type Unit ..... License No. ....

J D NEARN Contractor  
FROZEN FOOD EXPRESS  
JOY KINCANON Carrier  
Joy Kincanon—Agent

---

This AGREEMENT made this 24 day of August, 1959 between Frozen Food Express, Dallas, Texas, hereinafter referred to as Carrier, and J. D. Nearn of 1004 Sunnyside, Dallas, hereinafter referred to as Contractor.

## WITNESSETH:

WHEREAS the CARRIER is a common carrier by motor vehicle engaged in the transportation of commodities under certified authority from the Interstate Commerce Commission, and

WHEREAS the CONTRACTOR is engaged in the business of transporting freight by motor vehicle pursuant to contract with private, contract or common carriers or shippers, and,

WHEREAS the CARRIER desires to enter into an agreement with the CONTRACTOR for the transportation of certain commodities as may be provided by the CARRIER and the CON-

TRACTOR desires to contract with the CARRIER to transport such commodities,

Now, THEREFORE, the CONTRACTOR, for and in consideration of the sum of one dollar to it in hand paid by the CARRIER, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. The CONTRACTOR hereby agrees to furnish, upon request of the CARRIER, the equipment, which is more particularly described in Exhibit A and by this reference made part hereof, and the labor and to perform all the work necessary for the transportation of up to 4,200,000 pounds of various commodities as may be provided by the CARRIER from time to time. This is not to be construed as an agreement by the CARRIER to furnish any specific number of pounds of commodities for transportation by the CONTRACTOR.

2. The CARRIER agrees to pay the CONTRACTOR 62½% of gross revenue derived by the CARRIER from the full and proper performance of this agreement by the CONTRACTOR.

(a) Payment shall be withheld until proper submission to the CARRIER by mail or delivery of the documents showing complete performance of the contract, including all delivery receipts, bills of lading, and such other evidence of proper delivery of a shipment as may be required by the Interstate Commerce Commission.

(b) The CARRIER, at its option, may deduct from any payment otherwise due the CONTRACTOR hereunder all or part of any amount for which the CONTRACTOR is then indebted to the CARRIER.

(c) The CARRIER agrees to partially settle with the CONTRACTOR at periodic intervals, or on the completion of a trip and submission of delivery receipts, logs, trip sheets, etc. covering that trip.

(d) The CARRIER shall have a period of thirty (30) days after termination of this contract to verify the account of the CONTRACTOR as to earned revenue and deductions before making final settlement with the CONTRACTOR.

3. The CARRIER shall have such exclusive possession, control and use of the CONTRACTOR's equipment and shall assume responsibility in respect thereto to the extent required by the rules and regulations of the Interstate Commerce Commission.

4. The CONTRACTOR shall, at its expense, employ all necessary drivers, driver-helpers and laborers who shall be experienced, competent and qualified to carry out the work to be performed by the CONTRACTOR under this agreement. Such employees shall also be qualified under and meet all the requirements of applicable Federal and State Laws and municipal ordinances and the rules and regulations of the Interstate Commerce Commission and other regulatory authorities.

5. The CONTRACTOR shall perform this contract in a safe, competent and workman-like manner and shall be responsible to the CARRIER for complying, together with its employees, agents and servants, shall comply with all applicable requirements of Federal, State and local governments, including but not limited to the rules and regulations of the Interstate Commerce Commission. In performing this agreement, the CONTRACTOR shall direct the operation of its equipment in all respects including such matters as choice of any lawful routes, the number of drivers and helpers per unit of equipment, points for service of equipment, rest stops, etc. The CONTRACTOR shall be solely responsible for the direction and control of its employees, including selecting, hiring, firing, supervising, directing, training, setting wages, hours and working conditions, paying and adjusting grievances of its employees. The CONTRACTOR shall determine the method, means and the manner of performing this contract and shall be responsible to the

CARRIER for the proper performance of this contract in accordance with the rules and regulations of the Interstate Commerce Commission.

6. The CARRIER shall not be responsible for the wages and expenses of the CONTRACTOR, its drivers, driver-helpers and laborers nor social security, unemployment or other payroll taxes for the CONTRACTOR, its drivers, helpers and laborers.

7. The CONTRACTOR shall be responsible and liable to the CARRIER and agrees to pay for all shortage of, loss of, or damage to cargo transported by the CONTRACTOR.

8. The CONTRACTOR agrees to pay for any damage or loss to the equipment of the CARRIER to the extent of the deductible amount provided by the insurance covering said equipment, where such damage or loss results from the action of the CONTRACTOR, its employees, agents or servants. The CARRIER shall in no way be liable for any damage that may occur to the equipment of the CONTRACTOR used in the performance of this contract.

9. The CONTRACTOR shall maintain, at its expense, sufficient insurance coverage satisfactory to the CARRIER on the equipment used by it in the performance of this contract except that insurance coverage which the CARRIER is required to provide by the Interstate Commerce Commission rules and regulations.

10. The CONTRACTOR agrees to pay all operating and maintenance expenses on equipment used by it in the performance of this contract, to maintain said equipment in accordance with the specifications and regulations as set forth by the Interstate Commerce Commission and to keep said equipment in good operating condition and appearance.

11. The CONTRACTOR agrees to pay all fuel tax payments, road tax, equipment use fees or taxes, equipment license fees, drivers' license fees, and any other fees and fines

that may be assessed on the equipment used by it in the performance of this contract.

12. The CONTRACTOR shall deposit with the CARRIER the sum of \$100.00 to guarantee full, complete and competent performance of its obligations under this contract.

13. This contract may be terminated by either party without cause upon thirty days written notice to the other.

14. In the event either party violates any terms of this contract, the other party shall have the right to immediately terminate this contract.

15. This contract constitutes the entire agreement and understanding between the parties and it shall not be modified, altered, changed or amended in any respect unless in writing and signed by both parties.

16. The parties herein are not the agent of the other and neither party shall have the right to bind the other by contract or otherwise except as herein specifically provided.

17. This contract shall be governed by the laws of the State of Texas both as to interpretation and performance. The parties intend to create by this contract the relationship of Carrier and Independent Contractor and not an employer-employee relationship. Neither the CONTRACTOR nor its employees are to be considered the employees of the CARRIER at any time, under any circumstances or for any purposes.

18. The contract shall become effective upon the date of execution and shall be binding upon the parties and shall remain in full force and effect for a period of not less than thirty days. The parties hereby agree that upon completion of the obligation of transportation, as provided in Paragraph 1, by the CONTRACTOR, this contract and all of its terms and conditions shall be automatically renewed upon each subsequent completion of the obligation of transportation, as provided in Paragraph 1, unless terminated in

the manner hereinbefore provided. Nothing in this paragraph is to be deemed to invalidate or interfere with the rights and obligations contained in Paragraph 13 and 14 of this contract.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

FROZEN FOOD EXPRESS Carrier

By JOY KINCANON

Joy Kincanon Agent

By J D NEAM Contractor



## General Counsel's Exhibit 22-M

8  
BRANCH OFFICE  
FILE COPY

## WATKINS MOTOR LINES, INC.

*refrigerated Common Carrier*

THOMASVILLE, GEORGIA

No. 95123

PICK UP DATE 9/2/61

DATE BILLED 9/19/61

FROM  
ILLINOIS PACKING COMPANY  
901 E. 5TH ST.  
CHICAGO, ILLINOIS

TO  
ARMOUR & COMPANY  
ATLANTA, GEORGIA

CONNECTING LINE AND PRO.		SHIPPER'S B/L NO.	COMMODITY CODE	MANIFEST NUMBER	
MADDOCK TO WISCONSIN EL BYOD		PD-00016	11-A	5-15591	
NUMBER PACKAGES	DESCRIPTION AND IDENTIFYING NUMBERS	WEIGHT DUE TO CODE	CLASS OR RATE	CHARGES PREPAID COLLECT	
275	CORRICE ARM CHICKEN	27.595 AS 29.000	145	420.50	
LIABE 1400 5900 R. CHEF 3100-5					
DUE C.L.		100.00			
DUE C.L.					
DUE W.M.L.		300.50			



## General Counsel's Exhibit 22-O

8  
BRANCH OFFICE  
FILE COPY

## WATKINS MOTOR LINES INC.

*refrigerated Common Carrier*

THOMASVILLE, GEORGIA

No. 94870

PICK UP DATE 8/30/61

DATE BILLED 9/2/61

FROM  
CENTRAL MEAT COMPANY  
CHICAGO, ILLINOIS

TO  
EED-DEERE STORES, INC.  
MILWAUKEE, WISCONSIN

CONNECTING LINE AND PRO.		SHIPPER'S B/L NO.	COMMODITY CODE	MANIFEST NUMBER	
			11	5-1513	
NUMBER PACKAGES	DESCRIPTION AND IDENTIFYING NUMBERS	WEIGHT DUE TO CODE	CLASS OR RATE	CHARGES PREPAID COLLECT	
300	PACKER FRESH MEAT	31722	224	710.57	
350 5519 3100-1 ART FACT					
DUE C.L.					
DUE C.L.					
DUE W.M.L.					





## General Counsel's Exhibit 22-GG

8 BRANCH OFFICE  
FILE COPY

## WATKINS MOTOR LINES, INC.

Refrigerated Common Carr.

No. 93107

THOMASVILLE, GEORGIA

PICK UP  
DATE

5/12/61

DATE  
BILLED

5/12/61

FROM  
M

ARMER PACKING COMPANY  
8057 S. UNION AVE.  
CHICAGO, ILLINOIS

T  
O

JUNE DAIRY PRODUCTS COMPANY  
MIAMI, FLORIDA

CONNECTING LINE AND PRO.

SHIPPER'S B/L NO.

COMMODITY CODE

MANIFEST NUMBER

627931

10

5-17931

NUMBER PACKAGES	DESCRIPTION AND IDENTIFYING NUMBERS	WEIGHT LBS. TO 5000.	CLASS OR RATE	CHARGES	
				PREPAID	COLLECT
67 15 88	CASES COOKED MEATS IN TINS CARCASS FROZEN MEAT EACH FROZEN MEAT  STOP FOR PARTIAL UNLOADING  HERMAN SAUSAGE CO. TAMPA, FLA.	MIAMI TAMPA D	203 STOP	393.12 12.00 405.12	
527 4422 3102-1 EIL 11-58					

DUE C.L.

DUE C.L.

DUE W.M.L.



## General Counsel's Exhibit 22-KK

8 BRANCH OFFICE  
FILE COPY

## WATKINS MOTOR LINES, INC.

Refrigerated Common Carr.

No. 92540

THOMASVILLE, GEORGIA

PICK UP  
DATE

5/8/61

DATE  
BILLED

5/12/61

FROM  
M

SOUTH CHICAGO PACKING COMPANY  
CHICAGO, ILLINOIS

T  
O

KENN-DIXIE STORES  
MIAMI, FLORIDA

CONNECTING LINE AND PRO.

SHIPPER'S B/L NO.

COMMODITY CODE

MANIFEST NUMBER

11096

11

5-17053

NUMBER PACKAGES	DESCRIPTION AND IDENTIFYING NUMBERS	WEIGHT LBS. TO 5000.	CLASS OR RATE	CHARGES	
				PREPAID	COLLECT
284	PICKED FRESH MEAT				
		34703	232	805.11	
752 5721 3103-1 TUN					

DUE C.L.

DUE C.L.

DUE W.M.L.





## General Counsel's Exhibit 23

## EXHIBIT A

The Contractor warrants that the following described equipment conforms to and meets the requirements of all applicable Federal and State laws and the rules and regulations of the Interstate Commerce Commission and state authorities:

## TRACTOR:

Make Ford Year 1961 Model Y1000  
 Serial No. YOOXU1-40011 Motor No. YOOXU1-40011  
 Type Diesel CHTL. Inc. No. \_\_\_\_\_  
 Tire Size 1000 x 22 No. 6 Plys 12

## TRAILER:

Make \_\_\_\_\_ Year \_\_\_\_\_ Model \_\_\_\_\_  
 Serial No. \_\_\_\_\_ Length \_\_\_\_\_  
 No. of Rails \_\_\_\_\_ Inches of Insulation Roof \_\_\_\_\_"  
 Floor \_\_\_\_\_" Walls \_\_\_\_\_"  
 Tire Size \_\_\_\_\_ No. \_\_\_\_\_ Plys \_\_\_\_\_  
 Type of Refrigeration \_\_\_\_\_ Serial No. \_\_\_\_\_

Length of unit complete from front to rear

\_\_\_\_\_ft. \_\_\_\_\_in. \_\_\_\_\_ft. \_\_\_\_\_in.

Length of axle spacing from front axle to rear axle

\_\_\_\_\_ft. \_\_\_\_\_in.

and from drive axle to rear tandem axle

\_\_\_\_\_ft. \_\_\_\_\_in.

Both Parties Should Initial This Exhibit

J. D. W. B. W. C. J. D.

## OPERATING CONTRACT

This Agreement made this 9th day of February, 1961 between Watkins Motor Lines, Inc. of Thomasville, Georgia, hereinafter referred to as Carrier and James F. & C. Joseph Doyle of 7906 Parkside—Oaklawn, Illinois hereinafter referred to as Contractor,

[Illegible]

## WITNESSTH:

WHEREAS the Carrier is a common carrier by motor vehicle engaged in the transportation of commodities under certified authority from the Interstate Commerce Commission, and

WHEREAS the Contractor is engaged in the business of transporting freight by motor vehicle pursuant to contract with private, contract, or common carriers or shippers, and

WHEREAS the Carrier desires to enter into an agreement with the Contractor for the transportation of certain commodities as may be provided by the Carrier and the Contractor desires to contract with the Carrier to transport such commodities,

NOW, THEREFORE, the Contractor, for and in consideration of the sum of one dollar to it in hand paid by the Carrier, receipt of which is hereby acknowledged and in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. The Contractor hereby agrees to furnish upon request to the Carrier the equipment which is more particularly described in Exhibit A, by this reference made part hereof, and the labor and to perform all the work necessary for the transportation of such commodities and in such amounts as the Carrier may provide.

2. The Carrier agrees to pay to the Contractor a minimum of 75% of gross revenue derived by the Carrier

from the full and proper performance of this agreement by the Contractor.

(a) Payment shall be withheld until proper submission to the Carrier by mail or delivery of the documents showing complete performance of the contract, including all delivery receipts, bills of lading, copies of the manifest for all work performed, trip sheets, logs and such other evidence of proper delivery of a shipment as may be required by the Interstate Commerce Commission; or by the Carrier.

(b) The Carrier, at its option, may deduct from any payment otherwise due the Contractor hereunder all or part of any amount for which the Contractor is then indebted to the Carrier or its affiliated companies.

(c) The Carrier agrees to settle with the Contractor every 30 days within 10 days after the close of the previous month's books. The Carrier reserves the right to withhold \$200 on settlement date if the Contractor has failed to perform and complete any trips under this contract in the current month.

(d) The Carrier reserves the right to withhold as a reserve for claims, any amount sufficient to protect the Carrier from loss due to shortage, damage or other losses as may be apparent by notations on delivery receipt or other claim information filed with the carrier by a consignee or consignor.

(e) The Carrier shall have a period of 30 days after termination of this contract to verify the account of the Contractor as to earned revenue and deductions before making final settlement with the Contractor.

3. The Carrier shall have such possession, control and use of the Contractor's equipment and shall assume such

responsibility in respect thereto to the extent required by the rules and regulations of the Interstate Commerce Commission.

4. The Contractor shall, at its expense, employ all necessary drivers, driver-helpers and laborers who shall be experienced, competent and qualified to carry out the work to be performed by the Contractor under this contract. Such employees shall also be qualified under and meet all the requirements of applicable Federal and State Laws and Municipal Ordinances and the rules and regulations of the Interstate Commerce Commission and other regulatory authorities.

5. The Contractor shall perform this contract in a safe, competent and workmanlike manner and shall be responsible to the Carrier for complying, and together with its employees, agents and servants, shall comply with all applicable requirements of Federal, State and local governments, including but not limited to the rules and regulations of the Interstate Commerce Commission. In performing this agreement, the Contractor shall direct the operation per unit of equipment, points for service of equipment, rest stops, etc. The Contractor shall be solely responsible for the direction and control of its employees, including selecting, hiring, firing, supervising directing, training, setting wages, hours and working conditions, paying and adjusting the grievances of its employees. The Contractor shall determine the method, means and the manner of performing this contract and shall be responsible to the Carrier for the proper performance of this contract in accordance with the rules and regulations of the Interstate Commerce Commission.

6. The Carrier shall not be responsible for the wages and expenses of the Contractor, its drivers, driver-helpers and laborers nor social security, unemployment or other payroll taxes for the Contractor, its drivers, helpers and

laborers. The Carrier shall not be responsible for Workmen's Compensation Insurance covering the Contractor, its drivers, helpers and laborers. Such matters are the sole and exclusive responsibility and liability of the Contractor, except to the extent the Carrier has provided accident cargo insurance.

7. The Contractor shall be responsible and liable to the Carrier and agrees to pay for all shortage of, loss of, or damage to cargo transported by the Contractor.

8. The Contractor agrees to pay for any damage or loss to the equipment of the Carrier to the extent of the deductible amount provided by the insurance covering said equipment, where such damage or loss results from actions of the Contractor, its employees, agents or servants. The Carrier shall in no way be liable for any damage that may occur to the equipment of the Contractor used in the performance of this contract.

9. The Contractor shall maintain, at its expense, sufficient insurance coverage satisfactory to the Carrier on the equipment used by it in the performance of this contract; except that insurance coverage which the Carrier is required to provide by the Interstate Commerce Commission rules and regulations.

10. The Contractor agrees to pay all operating and maintenance expenses on the equipment used by it in the performance of this contract, to maintain said equipment in accordance with the specifications and regulations as set forth by the Interstate Commerce Commission and to keep said equipment in good operating condition and appearance, and to maintain such records of same as shall be required by the Interstate Commerce Commission or other governmental authorities.

11. The Contractor agrees to pay all Federal, State, County or Municipal taxes, including fuel tax payments, mileage tax, road tax, equipment use fees or taxes, equipment license fees, drivers' license fees, and any other fees

and fines that may be assessed on its personnel, equipment or the operation thereof.

12. This contract may be terminated by either party without cause upon thirty days' written notice to the other in the event either party violates any term of this contract, the other party shall have the right to immediately terminate this contract. Provided, that the Carrier may require the Contractor to complete delivery of any cargo loaded prior to termination. Should the Contractor fail to do so, the Carrier shall settle with the Contractor on the basis of such partial performance as completed under this contract, and charge any expense thereto to the Contractor.

13. This contract constitutes the entire agreement and understanding between the parties and it shall not be modified, altered, changed or amended in any respect unless in writing and signed by both parties.

14. The parties herein are not the agent of the other and neither party shall have the right to bind the other by contract or otherwise except as herein specifically provided.

15. This contract shall be governed by the laws of the State of Georgia, both as to interpretation and performance.

16. This contract shall become effective upon the date of execution and shall be binding on the parties and shall remain in full force and effect for a period of one year. Thereafter this contract shall be automatically renewed from year to year for one year periods unless terminated in the manner hereinbefore provided.

17. The parties intend to create by this contract the relationship of Carrier and Independent Contractor and not an employer-employee relationship. Neither the Contractor nor its employees are to be considered the employees of the Carrier at any time, under any circumstances or for any purposes.



IN WITNESS WHEREOF: the parties hereto have executed this agreement the day and year first above written.

BETTY WIMICH [?]  
(Witness)

---

(Witness)

WATKINS MOTOR LINES, INC.

By W. B. WATKINS, IV (Seal)

By JAMES F. DOYLE (Seal)

C. JOSEPH DOYLE (Seal)  
Contractor

CERTIFICATE

[Illegible]

KNOW ALL MEN BY THESE PRESENTS:

This is to certify that the following described equipment:

Tractor:

Make Ford, Year 1961, Model Y1000  
Serial No. YOOXU1-40011, Motor No. YOOSU1-40011  
Type Diesel  
Tire Size 1000 x 22, No. 6, Plys 12

Trailer:

Make Fruehauf, Year 1961, Model Insulated  
Serial No. 129701, Length 39'  
Tire Size 1000 x 22, No.6, Plys 12

Used by:

Tractor James F. & C. Joseph Doyle—7906 Parkside—  
Oaklawn, Illinois  
(Name and Address of Owner)

Trailer Watkins Equipment Company—Albany High-  
way—Thomasville, Georgia  
(Name and Address of Owner)

Being operated by Watkins Motor Lines, Inc., of Thomasville, Ga. under a contract dated (Month) February (Day) 9, 1961, for a period of Perpetual beginning this date and continuing thereafter until said contract of (Month) February (Day) 9, 1961, shall be completed or cancelled.

This certificate shall be considered as valid and in force and effect so long as it is in the possession of said owner, agent, servant and employee unless notice of cancellation hereof has been filed with the State Board, Commission, official (or the Governor if there is no such Board, Commission or official) having jurisdiction over the business of transportation by motor vehicle of each state in which Watkins Motor Lines, Inc., of Thomasville, Ga. operates.

The commodities to be transported are restricted to those commodities said Watkins Motor Lines, Inc. authorized to transport under its certificate authority received from the Interstate Commerce Commission, and/or State Board or Commission and any and all commodities the transportation of which require no such certificate authority.

The original of the contract of (Month) February (Day) 9, 1961 is kept at the offices of Watkins Motor Lines, Inc., of Thomasville, Ga.

Dated this 9th day of February, 1961

WATKINS MOTOR LINES, INC.

By W. B. WATKINS IV

JAMES F. DOYLE and C. JOSEPH DOYLE

James Doyle and C. Joseph Doyle  
(Tractor Owner)

WATKINS EQUIPMENT COMPANY

By W. B. WATKINS IV

(Trailer Owner)

## AGREEMENT

THIS AGREEMENT made and entered into this 9th day of February 1961, between James F. Doyle & C. Joseph Doyle, hereinafter referred to as the Contractor and Watkins Motor Lines, Inc., hereinafter referred to as the Company, shall be considered and is hereby made a valid part of the Operating Contract between the Contractor and the Company under date of February 9, 1961.

The Contractor agrees and understands that the ownership of the trailer is and shall remain in the name of the Company until the Contractor has executed all of the terms of the Trailer Agreement covering this trailer. It is also understood that this is a rental agreement and not a purchase agreement but that purchase is made possible under those terms stated in the Trailer Agreement.

It is also agreed that the Contractor understands that under no circumstances is he to make any type of alteration or change in the trailer without the consent and permission of the Company. This applies to tires, lights, advertising placards, etc., as well as all type of alterations, changes or additions to the trailer. The contractor also understands that tires, as they are furnished on the trailer, are to remain on the trailer until he has completed his 20% rental payment and is on 15% rental. Under no circumstances are the tires to be removed from the trailer and put on the tractor until this time.

It is also agreed between the parties hereto that the Contractor will return the trailer to the Company in the exact same condition the trailer was in as shown by Custody Inspection on the trailer which is signed by the contractor.

It is further agreed that the insurance is figured at the current market value of insurance at the time the Trailer Agreement is executed and in the event insurance values should go up and exceed the amount charged under the Trailer Agreement, the Contractor agrees to have the addi-

tional sum added to his Trailer Agreement price as set forth in Paragraph 7 of said Trailer Agreement.

Witness my hand and seal this 9th day of February, 1961.

C. JOSEPH DOYLE

JAMES F. DOYLE

(Seal)

Contractor

WATKINS MOTOR LINES, INC.

By W. B. WATKINS IV

(Seal)

Company

[Illegible]

## TRAILER AGREEMENT

THIS AGREEMENT, made and entered into this 9th day of February, 1961 by and between James F. Doyle & C. Joseph Doyle hereinafter called the "CONTRACTOR", and Watkins Equipment Company hereinafter called the "COMPANY".

## WITNESSETH:

WHEREAS the COMPANY presently owns a certain 1961 Fruehauf Trailer—38' in length—Serial No. 129701—Company Fleet No. 5750 hereinafter referred to as the "Trailer", and this CONTRACTOR owns a certain 1961 Ford Diesel Tractor Serial & Motor No. YOOXU1-40011—Company Fleet No. 34346M hereinafter referred to as the "Tractor".

WHEREAS the CONTRACTOR is engaged in the business of transporting freight by motor vehicle pursuant to a separate operating contract, upon terms and conditions set forth therein, with Watkins Motor Lines, Inc., and this agreement is to be construed concurrently therewith.

Now, THEREFORE, and in consideration of the mutual covenants and agreements herein contained, flowing to the parties, they agree as follows:

1. The Company agrees to furnish said trailer to the Contractor according to the terms of this agreement and to be drawn by his tractor under the operating contract with Watkins Motor Lines, Inc.

2. It is agreed and understood that Watkins Motor Lines, Inc. shall withhold for the operation of said trailer, a sum equal to Twenty (2525-20%) per cent (20%) of the gross revenue realized by Watkins Motor Lines, Inc. or any other carrier, from the operation of the trailer and tractor unit; either until the sum of Thirty Six Hundred Dollars (\$3,600.00) shall have been withheld, or for a period of ..... months. If the latter, 15% of the amount withheld

shall be as trailer reserve and 5% as Thermo King reserve. The Thermo King reserve may be used by the Contractor for any approved bona fide Thermo King repairs, but is subject to all other terms of this agreement. Thereafter Watkins Motor Lines, Inc. shall withhold Fifteen per cent (15%) of the gross revenue for the remaining period of time that this contract is in effect and all such sums as will be withheld shall be paid by Watkins Motor Lines, Inc. to the Company monthly.

3. The Contractor agrees to keep the trailer in a first-class mechanical condition at all times and equipped with good and serviceable tires at all times during the term of his agreement; to advise and make all necessary repairs to said trailer and refrigerated equipment at his own expense and at no cost to the Company. The Contractor further agrees not to remove any of the original tires from the trailer except to replace them with new tires when and where necessary. The Contractor also agrees that he will pay the first \$250 deductible for all damage except that he also agrees to pay \$500 deductible for any damages to the trailer roof caused by hitting a low object or an underpass.

4. All license tags required for said trailer are to be procured by the Company, in the name of the Company, and the cost thereof charged to the Contractor and deducted by Watkins Motor Lines, Inc. from the monthly settlement between the Contractor and Watkins Motor Lines, Inc. immediately on the first month's settlement, or any time thereafter as may be required.

5. The Company will pay ad valorem taxes which may become due on said trailer during the life of this agreement and the cost thereof shall be reimbursed by the Contractor.

6. Should the operating contract between the Contractor and Watkins Motor Lines, Inc. continue in force uninterruptedly for a period twelve (12) months from the date hereof, then and in that event, and only in that event, the

Contractor shall have the right to purchase said trailer from the Company and the Company agrees to sell said trailer to the Contractor provided that the Contractor shall pay to the Company the agreed purchase price thereof. If said conditions are met the Company agrees to give credit to the Contractor on said purchase price for all sums withheld by Watkins Motor Lines, Inc. under the agreement during the term thereof.

7. It is agreed and understood that the Company grants to the Contractor an option to purchase said trailer in the sum to be arrived at as follows:

For the purpose of this option it is agreed that the trailer has a total value and cost, including insurance, interest, etc., for the term thereof equal to Twenty One Thousand Six Hundred Thirty Four and No/100 Dollars (\$21,634.00). For the purpose of arriving at the applicable option price, should, at any time during this contract, the Contractor desire to exercise this option subject to Paragraph No. 6, or at the final termination of this contract; the price will be arrived at by allowing as depreciation and recovery of expense, all sums withheld by the Company under the terms of the agreement and the said purchase price will become the difference between the above stated amount and the sums withheld from the Contractor by Watkins Motor Lines, Inc. for the operation of this equipment. Any additional taxes applicable to the exercising of said option will be added to the above option price.

8. In the event this agreement shall continue in force for twelve (12) months and, thereafter the operating agreement between the Contractor and Watkins Motor Lines, Inc. shall be terminated, then and in that event the Company will allow the Contractor ten (10) days in which to pay the option price due on said trailer. During said 10-day period the Company is to have the use of said trailer, but agrees to deliver same to the Contractor free of all encumbrances upon the payment of the option price.

9. Unless sooner terminated under the terms hereof, this agreement shall automatically terminate after a period of Thirty Six (36) months. The Contractor shall have the privilege of exercising the option granted under paragraph No. 4, hereof at the expiration of this agreement, provided he shall give to the Company ten (10) days' written notice of his intention to do so prior to the expiration date.

10. It is distinctly understood and agreed that no title to said trailer, either legal or equitable, shall pass to the Contractor by virtue of the expiration of this agreement.

11. It is further agreed and understood that no equity in the funds withheld by Watkins Motor Lines, Inc. under this agreement shall accrue to the Contractor unless and until the Contractor shall comply with the provisions of Paragraph No. 6, of this agreement and exercises the option to purchase granted therein.

12. Should either this agreement or the operating contract between the Contractor and Watkins Motor Lines, Inc. be terminated for any cause prior to the exercise of the option to purchase by the Contractor, this contract will automatically terminate and the Contractor agrees to deliver the trailer to the Company at Thomasville, Georgia, or pay for all necessary legal fees and expenses incidental to repossession and return to Thomasville, Georgia.

13. The Contractor further agrees that when returning the trailer to the Company under Paragraph 12, he will not remove or replace from the trailer any tires, tubes, rims, accessories, parts or equipment that were part of that trailer under his operation of that contract for the past thirty days of operation. And that the tires, tubes, rims, accessories, parts or equipment returned to the Company will be usable and serviceable. Failing to do this, the Company has the right under this contract to withhold All funds and further to take legal action to recover above-mentioned



items so removed; and/or to recover damages in lieu thereof.

14. The Company also reserves the right to examine the trailer when turned back under Paragraph 12 and any damages thereto of any nature beyond normal wear and tear will be charged to the Contractor's account and deducted before final settlement of his account or contract with Watkins Motor Lines, Inc.

15. This writing sets forth the entire contract between the parties and may not be modified or changed except in writing signed by both parties.

16. All rights and privileges of the Contractor herein are non-assignable and non-transferable.

17. Time is of the essence of this contract.

18. It is further understood between the parties that this is not a lease contract but merely gives to the Contractor the right of possession together with an option to purchase as herein provided.

19. This contract shall be governed by the laws of the State of Georgia both as to interpretation and performance.

This Contract executed in duplicate, each copy being original evidence of the undertaking.

[Illegible]

JAMES F. DOYLE  
C. JOSEPH DOYLE  
(Contractor)

Company  
WATKINS EQUIPMENT COMPANY  
By W. B. WATKINS IV

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11. It is further agreed and understood that no equity in the funds withheld by Watkins Motor Lines, Inc. under this agreement shall accrue to the Contractor unless and until the Contractor shall comply with the provisions of Paragraph No. 6, of this agreement and exercises the option to purchase granted therein.

12. Should either this agreement or the operating contract between the Contractor and Watkins Motor Lines, Inc. be terminated for any cause prior to the exercise of the option to purchase by the Contractor, this contract will automatically terminate and the Contractor agrees to deliver the trailer to the Company at Thomasville, Georgia, or pay for all necessary legal fees and expenses incidental to repossession and return to Thomasville, Georgia.

13. The Contractor further agrees that when returning the trailer to the Company under Paragraph 12, he will not remove or replace from the trailer any tires, tubes, rims, accessories, parts or equipment that were part of that trailer under his operation of that contract for the past thirty days of operation. And that the tires, tubes, rims, accessories, parts or equipment returned to the Company will be usable and serviceable. Failing to do this, the Company has the right under this contract to withhold All funds and further to take legal action to recover above-mentioned

items so removed; and/or to recover damages in lieu thereof.

14. The Company also reserves the right to examine the trailer when turned back under Paragraph 12 and any damages thereto of any nature beyond normal wear and tear will be charged to the Contractor's account and deducted before final settlement of his account or contract with Watkins Motor Lines, Inc.

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19. This contract shall be governed by the laws of the State of Georgia both as to interpretation and performance.

This Contract executed in duplicate, each copy being original evidence of the undertaking.

[Illegible]

JAMES F. DOYLE  
C. JOSEPH DOYLE  
(Contractor)

Company  
WATKINS EQUIPMENT COMPANY  
By W. B. WATKINS IV

**Respondent's Exhibit 3  
(Excerpts)**

**MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND MISCELLANEOUS TRUCK TERMINAL EMPLOYEES  
Local Union No. 710**

**Labor Contract and Working Agreement covering TEAMSTERS, CHAUFFEURS, DUMP CART TRACTORS, LONG DISTANCE DRIVERS, AND HELPERS**

— between —

All large and small packers, sausage manufacturers and trucking lines signators to this agreement.

• • • • •

**ARTICLES OF AGREEMENT**

The Company, hereinafter referred to as the Employer, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 710, hereinafter referred to as the Union, agree to be bound by the following terms and provisions covering wages and working conditions:

**ARTICLE I—Recognition**

1. The Union shall be sole representative of those classifications of employees covered by this agreement in collective bargaining with the Employer.

• • • • •

**ARTICLE II—Seniority**

• • • • •

5. Employees leaving the Bargaining Unit to accept a job with the Company outside of the Bargaining Unit shall retain their seniority rights in the department for period of one year.

## ARTICLE III—Wages

The authorized wage rates for the following job classifications shall be adjusted as indicated below:

## CHAUFFEURS:

	Effective May 1, 1958 to April 30, 1959		Effective May 1, 1959 to April 30, 1960		Effective May 1, 1960 to April 30, 1961	
	Minimum Weekly Rate	Minimum Hrly. Rate	Minimum Weekly Rate	Minimum Hrly. Rate	Minimum Weekly Rate	Minimum Hrly. Rate
Over five tons, including city tractors .....	\$97.20	\$2.43	\$100.00	\$2.50	\$102.80	\$2.57
Three to five tons, inclusive .....	96.40	2.41	99.20	2.48	102.00	2.55
Over one and under three tons .....	93.40	2.33½	96.20	2.40½	99.00	2.47½
One ton and under .....	90.60	2.26½	93.40	2.33½	96.20	2.40½
Delicatessen and Special Delivery .....	90.60	2.26½	93.40	2.33½	96.20	2.40½
Dump cart tractors .....	86.40	2.16	89.20	2.23	92.00	2.30
Regular Helpers .....	83.20	2.08	86.00	2.15	88.80	2.22
TEAMSTERS:						
Downer and cripple cart drivers .....	88.60	2.21½	91.40	2.28½	94.20	2.35½
Long Distance Hauling:						
Work now classified as Long Distance Hauling (normally 12 hours or over):						
Three ton and over trucks .....	....	2.63	....	2.70	....	2.77
Under three ton trucks ..	....	2.57	....	2.64	....	2.71
Regular Helpers .....	....	2.26	....	2.33	....	2.40

Nine (.09) cents per hour additional compensation will be paid for work performed between the hours of .... P.M. and .... A.M.

As of May 1, 1958, cost of living allowance under Article XIV amounts to 9c per hour allowance in addition to the above rates.

Regarding Wages see Article X Pension Plan.

## ARTICLE XII—

1. Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equip-

ment, except when there is a lack of equipment at individual plants or branches, and then all effort will be made to contract a cartage company who employs members of Local No. 710. Employer agrees to do all possible to use own equipment at all times.

2. On deliveries to suburban points within the 50 mile zone, Common or Contract Haulers will be used only when no regular delivery service by the company's own trucks is maintained to such points. When deliveries are made on other than regular schedule delivery days, it is agreed that Common or Contract Haulers can deliver not to exceed 1,000 pounds on such days.

3. The above does not apply to express or railway pick-up by express company or railway company trucks. No pick-up by terminal company is to be reloaded into overland or over-the-road trucks unless destination is beyond the 50 mile zone. This applies only to those plants, or branches, who at present are operating under Local No. 710 contract.

• • • • •

#### ARTICLE XV—Term

(a) All changes in this Agreement from that contained in the Agreement covering the period to May 1, 1958, shall take effect as of the date of the signing of this agreement, with the exception of the wage clause in Article 3, which specifies the effective date of such wage rate changes and shall remain in effect until May 1, 1961, and from year to year thereafter. Provided, however, that this agreement may be terminated on May 1, 1961, or on May 1 of any year thereafter by either party on written notice mailed to the Company or to the Union at least sixty (60) days prior to May 1, 1961, or prior to May 1 of any year thereafter.

(b) This Agreement is executed in full satisfaction of each and every demand of each party against the other

for the duration of this Agreement. For the duration only of this Agreement, each party waives its right to require the other to bargain collectively within the meaning of the National (or any State) Labor Relations Act with respect to any matter whatsoever, whether covered by this Agreement provided.

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#### **Respondent's Exhibit 4**

##### **JOB CLASSIFICATION JURISDICTION**

All work described and covered by this agreement shall be assigned to and performed exclusively by employees in the collective bargaining unit herein described and covered. No pick-ups and or deliveries of meat and packing house products shall be made by any over-the-road, city or suburban drivers.

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#### **Respondent's Exhibit 5**

##### **ADDENDUM TO AGREEMENT**

It is agreed by and between the employer and the union that the following addendum shall be a part of the collective bargaining agreement in effect between the employer and the union. The employer agrees that all meat and meat products which originate with the employer for truck shipment into and out of the Chicago city limits will be done by a certificated carrier who is a party to the Central States or other over-the-road Teamster Motor Freight agreement.

All local overflow cartage shipments of meat and meat products originating with the Employer in Chicago will be transported by cartage companies who are parties to the collective bargaining agreement referred to above.

Company owned or company leased equipment is exempt from this addendum except that employer over-the-road drivers will not be permitted to make retail store door deliveries within the Chicago city limits. Leased equipment leased directly to the company will be considered the same as employer owned equipment.

JOHN T. O'BRIEN  
*Union*

SOUTH CHICAGO PACKING Co.  
*Company*  
June 1, 1961  
*Date*  
M. R. ALEXANDER

#### ARTICLE I. VALIDITY CLAUSE:

It is the intent and purpose of this Agreement that any and all phases of the Labor-Management Relations Act of 1947 applicable to this Agreement shall be complied with, if legally valid. However, if in the event of this Agreement any article is found to be in conflict with such Act, as a consequence of such illegality, on the conflicting article and/or articles, of this Agreement shall be abrogated—all other terms and conditions to continue in full for the duration of this Agreement. In respect to any conflicting clause that is declared in conflict, the parties agree to negotiate, upon thirty (30) days notice, for a replacement clause.

#### EMPLOYERS GROUP PROPOSAL

Former AGREEMENT with the changes as outlined below:

1. Two year contract, expiration date May 1, 1963.
2. WAGES
  - (A) 10¢ per hour increase, effective 5/1/61.
  - (B) New classification tractor driver over ten ton add 5¢ per hour, effective 5/1/61.



(c) 8¢ per hour increase, effective 5/1/62.

(d) Clarify definition of long haul classification by adding to present language:

“Normally 12 hours or over” No city deliveries.

### 3. HEALTH & WELFARE

Increased currently to \$3.00 per week.

### 4. VACATIONS

(A) Revise to provide one (1) weeks vacation for one (1) year: two (2) weeks for three (3) years: three (3) weeks for ten (10) years and four (4) weeks for twenty-five (25) years, effective 1961.

(B) Eliminate the first sentence of the second paragraph on page twelve and substitute the following:

“It is understood that during the first year of employment the man must work 60% of the total working days in order to obtain his vacation and must have been employed for the full year. During the second and subsequent years the man must have worked 60% of the total working days of the year”.

### 5. COST OF LIVING

Continue on same basis but incorporate the 21¢ per hour increment into the base rate. Establish new base at 127.3 under new Agreement.

### 6. PENSIONS

Effective on date to be negotiated for change-over, employer to make contribution of \$3.00 per week. Effective May 1, 1962, contribution to be increased to \$4.00 per week.

### 7. HOLIDAYS

Continue Washington's Birthday and Veterans' Day as paid holidays and write language to provide that these

two holidays will be celebrated on an individual employee basis, the dates to be mutually agreed on between the employee and the company.

8. WORK WEEK

The straight time work week shall consist of five (5) days, Monday thru Friday inclusive, of eight (8) continuous hours each day. This does not apply to long distance hauling or a combination of local and long distance hauling. They shall be paid time and one-half after forty (40) hours in any one week.

9. The attached to be made an addendum to the new agreement.

JOHN T. O'BRIEN  
*Union*

SOUTH CHICAGO PACKING Co.

M. R. ALEXANDER

*Company*

June 1, 1961

*Date*

**Respondent's Exhibit 6  
(Excerpts)**

**MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND MISCELLANEOUS TRUCK TERMINAL EMPLOYEES**

**Local Union No. 710**

**Labor Contract and Working Agreement covering TEAMSTERS, CHAUFFEURS, DUMP CART TRACTORS, LONG DISTANCE DRIVERS, AND HELPERS**

— between —

All large and small packers, sausage manufacturers and trucking lines signators to this agreement.

• • • • •

**ARTICLES OF AGREEMENT**

The Company, hereinafter referred to as the Employer, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 710, hereinafter referred to as the Union, agree to be bound by the following terms and provisions covering wages and working conditions:

**ARTICLE I—Recognition**

1. The Union shall be sole representative of those classifications of employees covered by this agreement in collective bargaining with the Employer.

• • • • •

**ARTICLE II—Seniority**

• • • • •

5. Employees leaving the Bargaining Unit to accept a job with the Company outside of the Bargaining Unit shall retain their seniority rights in the department for period of one year.

## ARTICLE III—Wages

The authorized wage rates for the following job classifications shall be adjusted as indicated below:

## CHAUFFEURS:

	Effective May 1, 1961 to April 30, 1962		Effective May 1, 1962 to April 30, 1963	
	Minimum Weekly Rate	Minimum Hourly Rate	Minimum Weekly Rate	Minimum Hourly Rate
Over Ten Tons .....	\$117.20	\$2.93	\$120.40	\$3.01
Over Five Tons and and Under Ten Tons, Including City Tractors .....	115.20	2.88	118.40	2.96
Three to Five Tons, Inclusive	114.40	2.86	117.60	2.94
Over One and Under Three Tons .....	111.40	2.78½	114.60	2.86½
One Ton and Under .....	108.60	2.71½	111.80	2.79½
Delicatessen and Special Delivery .....	108.60	2.71½	111.80	2.79½
Dump Cart Tractors .....	104.40	2.61	107.60	2.69
Regular Helpers .....	101.20	2.53	104.80	2.61
TEAMSTERS:				
Downer and Cripple Cart Drivers .....	106.60	2.66½	109.80	2.74½

## Long Distance Hauling:

Work now classified as Long Distance Hauling (normally 12 hours or over—no city deliveries):

Over Ten Tons .....	....	\$3.13	....	\$3.21
Three Ton and Under Ten Ton Trucks .....	....	3.08	....	3.16
Under Three Ton Trucks ....	....	3.02	....	3.10
Regular Helpers .....	....	2.71	....	2.79

Nine (9) cents per hour additional compensation will be paid for work performed between the hours of .... p.m. and .... a.m.

The above rates include the twenty-one (21) cents cost-of-living allowance accumulated prior to May 1, 1961.

• • • • •

## ARTICLE XII—

1. Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago

Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equipment, except when there is a lack of equipment at individual plants or branches, and then all effort will be made to contract a cartage company who employs members of Local No. 710. Employer agrees to do all possible to use own equipment at all times.

2. On deliveries to suburban points within the 50 mile zone, Common or Contract Haulers will be used only when no regular delivery service by the company's own trucks is maintained to such points. When deliveries are made on other than regular schedule delivery days, it is agreed that Common or Contract Haulers can deliver not to exceed 1,000 pounds on such days.

3. The above does not apply to express or railway pick-up by express company or railway company trucks. No pick-up by terminal company is to be reloaded into overland or over-the-road trucks unless destination is beyond the 50 mile zone. This applies only to those plants, or branches, who at present are operating under Local No. 710 contract.

• • • • •

#### ARTICLE XV—Term

(a) Except as otherwise expressly provided, all changes in this Agreement from that contained in the Agreement covering the period to May 1, 1961, shall take effect as of the date of the signing of this Agreement and shall remain in effect until May 1, 1963, and from year to year thereafter. Provided, however, that this Agreement may be terminated on May 1, 1963, or on May 1 of any year thereafter by either party on written notice mailed to the Company or to the Union at least sixty (60) days prior to May 1, 1963, or prior to May 1 of any year thereafter.

(b) This Agreement is executed in full satisfaction of each and every demand of each party against the other for the duration of this Agreement. For the duration only of

this Agreement, each party waives its right to require the other to bargaining collectively within the meaning of the National (or any State) Labor Relations Act with respect to any matter whatsoever, whether covered by this Agreement or not, except as otherwise provided in this Agreement or the Strike Settlement Agreement dated June 6, 1961.

• • • • •

### STRIKE SETTLEMENT AGREEMENT

This STRIKE SETTLEMENT AGREEMENT is made by and between Meat and Highway Dockmen Helpers and Miscellaneous Truck Terminal Employees Local No. 710, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter called the "Union") and Armour and Company (hereinafter called the "Company").

1. The Union agrees on behalf of itself and its members, except as specifically provided otherwise below, that it shall not engage in a strike, stoppage, slowdown or other suspension of work, or picketing, regarding the provision hereto annexed and marked "Exhibit A" (now the subject of charges before the National Labor Relations Board), or any variation thereof.

2. The Company agrees that if and when a decision of the National Labor Relations Board or (in the event that such decision of the National Labor Relations Board is the subject of appellate review within sixty (60) days of such decision) a final determination by a court of last resort concludes that "Exhibit A" is valid, it shall, upon thirty (30) days' notice in writing from the Union, bargain collectively regarding the subject matter of the aforesaid "Exhibit A."

3. In the event that there is a final determination by a court of last resort that the aforesaid "Exhibit A" is valid, and, thereafter the parties (the Company and the

Union) fail to reach an agreement regarding the subject matter referred to in "Exhibit A," the Union may engage in a strike and the Company may engage in a lockout with reference thereto.

IN WITNESS WHEREOF, the parties have executed this Strike Settlement Agreement at Chicago, Illinois, as of June 6, 1961.

FOR THE COMPANY

.....  
.....

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION  
No. 710

.....  
.....

• • • • •

EXHIBIT A

ADDENDUM

It is agreed by and between the Employer and the Union that the following addendum shall become a part of the collective bargaining agreement entered into between the Employer and the Union.

The Employer agrees that all meat and meat products which originate with or are processed or sold by the Employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer by employees covered by this agreement. It is specifically understood that all deliveries to customers or consignees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement.

In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the Chicago city limits, it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

This addendum shall not in any way be construed to diminish the description of the work covered by this agreement as set forth in any provision of this agreement.

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**Respondent's Exhibit 7**  
**(Excerpts)**

**OVER-THE-ROAD MOTOR FREIGHT  
AGREEMENT**

**CENTRAL STATES AREA**

**LOCAL UNION NO. 710**

**OF THE**

**INTERNATIONAL BROTHERHOOD TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF AMERICA**

**4217 S. Halsted St., Chicago 9, Ill.**

**CLiffside 4-3200**

**Period Covered**

**February 1, 1961 to January 31, 1964**



CENTRAL STATES AREA  
OVER-THE-ROAD MOTOR FREIGHT  
- AGREEMENT

COVERING DRIVERS EMPLOYED  
BY PRIVATE, COMMON AND  
CONTRACT CARRIERS

for the period of  
February 1, 1961, to January 31, 1964,  
in the following territory:

Michigan, Ohio, Indiana, Illinois, Wisconsin, Minnesota,  
Iowa, Missouri, North Dakota, South Dakota, Nebraska,  
Kansas, Kentucky and Huntington and Wheeling, West  
Virginia, and operations into and out of all contiguous  
territory.

The .....  
(Company)

hereinafter referred to as the Employer,  
and

the Central States Drivers Council and Local Union No.  
710, affiliated with the International Brotherhood of Team-  
sters, Chauffeurs, Warehousemen and Helpers of America,  
hereinafter referred to as the Union, agree to be bound  
by the terms and provisions of this Agreement.

ARTICLE 1.—Scope of Agreement

SECTION 1. Operations Covered

The execution of this Agreement on the part of the Em-  
ployer shall cover all over-the-road operations of the Em-  
ployer within, into, and out of the Area and Territory  
described above.

SECTION 2. Employees Covered

(a) Employees covered by this Agreement shall be con-  
strued to mean any driver, chauffeur, or driver-helper

operating a truck, tractor, motorcycle, passenger or horse-drawn vehicle, or any other vehicle operated on the highway, street or private road for transportation purposes when used to defeat the purposes of this Agreement.

#### Student Driver

(b) Employees on student trips shall be paid in accordance with the provisions of this Agreement.

#### Hired or Leased Equipment

(c) In all cases hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of, and by which the owner-operator performs his services, as well as the ends to be accomplished.

### SECTION 3. City or Local Work

Local dock work or city pickup and delivery service is not subject to the terms and conditions of this Agreement, but is subject to separate agreements entered into between the Employer and the involved Local Union. Employees subject to this Agreement shall not be permitted to perform dock work or city pickup and delivery service, except as specifically permitted herein. At no time shall any provision of this contract permitting pickup and delivery supersede the provisions of any local cartage contract which prohibits such pickup and delivery.

The prevailing Local Union city cartage contract shall govern all wages and conditions on runs exclusively within a radius of twenty-five (25) miles of the home terminal, provided the hourly wage rates are equal to or higher than the peddle rate in this contract; otherwise the peddle rate shall apply. These restrictions on city or local work are applicable in all Areas in which the employer has terminals or makes pickups or delivery in connection with over-the-road operations.

• • • • •

## ARTICLE 2. Union Shop and Dues

### SECTION 1.

(a) The Employer recognizes and acknowledges that the Central States Drivers Council and the Local Union are the exclusive representatives of all employees in the classifications of work covered by this Agreement for the purposes of collective bargaining as provided by the National Labor Relations Act.

(b) All present employees who are members of the Local Union on the effective date of this subsection or on the date of execution of this Agreement, whichever is the later, shall remain members of the Local Union in good standing as a condition of employment. All present employees who are not members of the Local Union and all employees who are hired hereafter shall become and remain members in good standing of the Local Union as a condition of employment on and after the 31st day following the beginning of their employment or on and after the 31st day following the effective date of this subsection or the date of this Agreement, whichever is the later. This provision shall be made and become effective as of such time as it may be made and become effective under the provisions of the National Labor Relations Act, but not retroactively.

## ARTICLE 5. Seniority

### SECTION 8. Extra Equipment

Certificated or permitted carriers shall use their own available equipment together with all leased equipment under minimum thirty (30) day bona fide lease arrangements on a rotating board, before hiring any extra equipment.

## ARTICLE 23. Pickup and Delivery Limitations

The operations shall be dock to dock, and there shall be no pickups or deliveries permitted at either end of the run

except that one pickup of a solid load at point of origin and one delivery of a solid load at destination shall be allowed provided that the driver receives the following rate or the prevailing city scale, if higher, for such service, including time lost through delivery. At no time shall any provision of this contract permitting pickup and delivery supersede the provisions of any local cartage contract which prohibits such pickup and delivery.

Effective Feb. 1, 1961 .....	\$2.73 per hour
Effective Aug. 1, 1961 .....	2.76 per hour
Effective Feb. 1, 1962 .....	2.84 per hour
Effective Feb. 1, 1963 .....	2.94 per hour

Pickup and delivery shall not be permitted where a driver or drivers or driver and helper have driven 225 miles, or on any run which cannot be completed in ten consecutive hours from point of origin to final destination, including pickup and delivery. In no event shall pickup or delivery be permitted in any city having a population of 600,000 or more, based upon the 1950 census. It is further agreed that all pickup and/or delivery limitations in this Article shall not prohibit a driver from making pickups and/or deliveries at points en route and intermediate terminals.

The same pick-up and delivery limitations shall apply where the pick-up and/or delivery is made in the Southeast Area, Southwest Area, the Eastern Conference Area, and Western Conference Area, as established by awards of the Executive Board of the International Union.

Peddle-run drivers shall be allowed to perform their normal duties of their runs in the seventy-five (75) mile radius.

It is specifically agreed that none of the limitations contained in this Article shall apply to the transportation of iron, steel and perishable commodities as defined in

ARTICLES 39 and 40 of this Agreement and except where ARTICLE 6 prevails.

• • • • •  
ARTICLE 32. Owner-Operators

SECTION 1.

Owner-operators (See Note), other than certificated or permitted carriers, shall not be covered by this Agreement unless affiliated by lease with a certificated or permitted carrier which is required to operate in full compliance with all the provisions of this Agreement and holding proper ICC and state certificates and permits. Such owner-operators shall operate exclusively in such service and for no other interests.

(NOTE: Whenever "owner-operator" is used in this Article, it means owner-driver only, and nothing in this Article shall apply to any equipment leased except where owner is also employed as a driver.)

SECTION 2.

This type of operator's compensation for wages and working conditions shall be in full accordance with all the provisions of this Agreement. The owner-operator shall have seniority as a driver only.

SECTION 3.

Certificate and title to the equipment must be in the name of the actual owner.

SECTION 4.

In all cases, hired or leased equipment shall be operated by an employee of the certificated or permitted carrier. The employer expressly reserves the right to control the manner, means and details of, and by which, the owner-operator performs his services, as well as the ends to be accomplished.

**SECTION 5.**

Certificated or permitted carriers shall use their own available equipment, together with all leased equipment under minimum thirty-day bona fide lease arrangements, on a rotating board, before hiring any extra equipment.

**SECTION 6.**

Separate checks shall be issued by the certificated or permitted carriers for driver's wages and equipment rental. At no time shall the equipment check be for less than actual miles operated. Separate checks for drivers shall not be deducted from the minimum truck rental revenue. The driver shall turn in time direct to the certificated or permitted carrier. All monies due the owner-operator may be held no longer than two weeks, except where the lease of equipment agreement is terminated and in such case all monies due the operator may be held no longer than thirty (30) days from the date of the termination of the operation of the equipment.

**SECTION 7.**

Payment for equipment service shall be handled by the issuance of a check for the full mileage operated, tonnage or percentage, less any agreed advances. A statement of any charges by the certificated or permitted carrier shall be issued at the same time, but shall not be deducted in advance.

**SECTION 8.**

The owner-operator shall have complete freedom to purchase gasoline, oil, grease, tires, tubes, etc., including repair work, at any place where efficient service and satisfactory products can be obtained at the most favorable prices.

**SECTION 9.**

There shall be no deduction pertaining to equipment operation for any reason whatsoever.

**SECTION 10.**

The Employer or certificated or permitted carrier hereby agrees to pay road or mile tax, social security tax, compensation insurance, public liability and property damage insurance, bridge tolls, fees for certificates, permits and travel orders, fines and penalties for inadequate certificates, license fees, weight tax and wheel tax, and for loss of driving time due to waiting at state lines, and also cargo insurance. It is expressly understood that the owner-driver shall pay the license fees in the state in which title is registered.

All tolls, no matter how computed, must be paid by the Employer regardless of any agreement to the contrary.

All taxes or additional charges imposed by law relating to actual truck operation and use of highways, no matter how computed or named, shall be paid by the Carrier, excepting only vehicle licensing as such, in the state where title is registered.

**SECTION 11.**

There shall be no interest or handling charge on earned money advanced prior to the regular pay day.

**SECTION 12.**

(a) All certificated or permitted carriers hiring or leasing equipment owned and driven by the owner-driver shall file a true copy of the lease agreement covering the owner-driven equipment with the Joint State Committees. The terms of the lease shall cover only the equipment owned and driven by the owner-driver and shall be in complete accord with the minimum rates and conditions provided

herein, plus the full wage rate and supplementary allowances for drivers as embodied elsewhere in this Agreement.

(b) The minimum rate for leased equipment owned and driven by the owner-driver shall be:

Single axle,  
tractor only .....10½¢ per mile

Tandem axle,  
tractor only .....11¢ per mile

Single axle,  
trailer and 35 to 40 foot  
tandem trailer only .....4¢ per mile  
(With \$8.00 minimum daily guarantee.)

Tandem axle,  
40 foot or over, trailer only .....5¢ per mile  
(With \$10.00 minimum daily guarantee.)

Minimum daily guarantee for trailers does not apply to Saturday, Sunday or Holidays. It applies to either the first day or last day of use, but not both.

The above rates also apply to deadheading.

The above rates are based on twenty-three thousand pounds (23,000) load limit for single axle tractors and twenty-seven thousand pounds (27,000) load limit for tandem axle tractors.

On load limits over twenty-three thousand pounds (23,000), there shall be ½¢ additional per mile for each one thousand pounds (1,000) or fraction thereof in excess of twenty-three thousand pounds (23,000).

There shall be a minimum guarantee of twenty-five thousand pounds (25,000) for leased single axle tractors and twenty-seven thousand pounds (27,000) for leased tandem axle tractors owned and driven by the owner driver.



During the first year of a lease, there shall be a minimum guarantee of \$100 a month for rental of single axle tractors unless the lease is terminated by mutual agreement or for just cause (which does not include layoff). There shall be an offset against such minimum monthly guarantee to the extent that rental income exceeds the minimum mileage rental revenue provided herein, and to the extent of other for hire rental revenue during periods of lay-off. The carrier may, at its option, provide a minimum guarantee of 26,000 pounds for single axle tractors in lieu of the minimum monthly guarantee provided herein.

Nothing herein shall apply to leased equipment not owned by the driver. The minimum rates set forth above result from the joint determination of the parties that such rates represent only the actual cost of operating such equipment. The parties have not attempted to negotiate a profit for the owner-driver.

#### SECTION 13.

Driver-owner mileage scale does not include use of equipment for pickup or delivery at point of origin terminal or at point of destination terminal, but shall be subject to negotiations between the Local Union and Company. Such negotiations shall be only for the purpose of protecting the wage rate of the driver only as an employee. Failure to agree shall be submitted to the grievance procedure.

#### SECTION 14.

There shall be no reductions where the present basis of payment is higher than the minimums established herein for this type of operation. Where owner-operator is paid on a percentage or tonnage basis and the operating company reduces its tariff, the percentage or tonnage basis of payment shall be automatically adjusted so that the owner-operator suffers no reduction in equipment rental or wages, or both.

## SECTION 15.

It is further understood and agreed that any arrangements which have heretofore been entered into between members of this Union, either among themselves or with the Employer or with the aid of the Employer, applicable to owner-driver equipment contrary to the terms hereof, shall be dissolved or modified within thirty (30) days after the signing of this Agreement so that such arrangements shall apply only to equipment of the owner-driver while being driven by such owner-driver. In the event that the parties cannot agree on a method of dissolution or modification of such arrangement to make the same conform to this Agreement, the question of dissolution or modification shall be submitted to arbitration, each party to select one member of the arbitration board, and the two so selected to choose a third member of said board. If the two cannot agree upon the third within five (5) days, he shall be appointed by the Joint State Committee. The decision of said board is to be final and binding.

## SECTION 16.

It is further agreed that the intent of this clause and this entire Agreement is to assure the payment of the Union scale of wages as provided in this Agreement and to prohibit the making and carrying out of any plan, scheme or device to circumvent or defeat the payment of wage scales provided in this Agreement. This clause is intended to prevent the continuation of or formation of combinations or corporations or so-called lease of fleet arrangements whereby the driver is required to and does periodically pay losses sustained by the corporation or fleet arrangement, or is required to accept less than the actual cost of the running of his equipment, thus, in fact, reducing his scale of pay.

## SECTION 17.

It is further agreed that if the Employer or certificated or permitted carrier requires that the "driver-owner-operator" sell his equipment to the Employer or certificated or permitted carrier, directly or indirectly, the "driver-owner-operator" shall be paid the fair true value of such equipment. Copies of the instruments of sale shall be filed with the Union and unless objected to within ten (10) days shall be deemed satisfactory. If any question is raised by the Union as to such value, the same shall be submitted to arbitration, as above set forth, for determination. The decision of the arbitration board shall be final and binding.

## SECTION 18.

It is further agreed that the Employer or certificated or permitted carrier will not devise or put into operation any scheme, whether herein enumerated or not, to defeat the terms of the Agreement, wherein the provisions as to compensation for services on and for use of equipment owned by owner-driver shall be lessened, nor shall any owner-driver lease be cancelled for the purpose of depriving Union employees of employment, and any such complaint that should arise pertaining to such cancellation of lease or violation under this section shall be subject to ARTICLE 10.

## SECTION 19.

(a) The use of individual owner-operators shall be permitted by all certificated or permitted carriers who will agree to submit all grievances pertaining to owner-operators to joint Employer-Union grievance committees in each respective state. It is understood and agreed that all such grievances will be promptly heard and decided with the specific purpose in mind of

- (1) protecting provisions of the Union contract;

(2) prohibiting any and all violations directly or indirectly of contract provisions relating to the proper use of individual owners;

(3) prohibiting any attempts by any certificated or permitted carrier in changing his operation which will affect the rights of drivers under the terms of the contract and generally the certificated or permitted carriers agree to assume responsibility in policing and doing everything within their power to eliminate all alleged abuses in the use of owner-drivers which resulted in the insertion of Section 19 (Article 33) in the original 1945-47 Over-the-Road contract;

(4) owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract;

(5) the certificated or permitted carriers agree that they will, with a joint meeting of the Unions, set up uniform rules and practices under which all such cases will be heard;

(6) it shall be considered a violation of the contract should any operator deduct from rental of equipment the increases provided for by the 1961 Amendments or put into effect any means of evasion to circumvent actual payment of increases agreed upon effective for the period starting February 1, 1961, and ending January 31, 1964.

(b) No owner-operator shall be permitted to drive or hold seniority where he owns three or more pieces of leased equipment. This provision shall not apply to present owner-operators having three or more pieces of equipment under lease agreement, but such owner-operator shall not be permitted to put additional equipment in service so long as he engages in work covered by this Agreement or holds seniority. Where such owner-operator drives he can hold seniority where he works sixty (60) per cent or more of time.

## SECTION 20.

All leases, agreements, or arrangements between carriers and owner-operators shall contain the following statement:

The equipment which is the subject of this lease shall be driven by an employee of the lessee at all times that it is in the service of the lessee. If the lessor is hired as an employee to drive such equipment he shall receive as rental compensation for the use of such equipment no less than the minimum rental rates, allowances, and conditions (or the equivalent thereof as approved by the Joint Area Committee), established by the then current CENTRAL STATES AREA OVER-THE-ROAD MOTOR FREIGHT AGREEMENT for this type of equipment, and, in addition thereto, the full wage rate and supplementary allowances for drivers (or the equivalent thereof as approved by the Joint Area Committee.)

The lessee expressly reserves the right to control the manner, means and details of, and by which the driver of such leased equipment performs his services, as well as the ends to be accomplished.

To the extent that any provision of this lease may conflict with the provisions of such CENTRAL STATES AREA OVER-THE-ROAD MOTOR FREIGHT AGREEMENT as it applies to equipment driven by the owner such provision of this lease shall be null and void and the provisions of such Agreement shall prevail.

\* \* \* \* \*

ARTICLE 40.—Perishable Commodities Only

The description of the perishable commodities is as follows:

Fresh meat

Poultry, eggs and butter (fresh or frozen)

## SECTION 1.

Fluid milk  
 Frozen foods  
 Fresh fruits and vegetables  
 Fresh dairy products

## SECTION 2.

One pickup and one delivery of a solid load may be made by the road drivers in the event same can be performed within the Interstate Commerce Commission regulations, provided no driver shall make delivery at final destination who has worked and/or driven more than ten (10) hours. Where local conditions do not now permit any such pickup and/or delivery, such conditions shall continue. There shall be no pickup or delivery of a solid load in the area under the jurisdiction of I. B. T. Locals 710, 705, 782, 801 and Independent Local 705, in the Chicago area, other than those that may be permitted under the terms of such Locals' agreements.

• • • • •

## ARTICLE 47.—Subcontracting

(a) The Employer agrees to refrain from using the services of any person who does not observe the wages, hours and conditions of employment established by Labor Unions having jurisdiction over the type of services performed.

(b) For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that no work or services presently performed or hereafter assigned to the collective bargaining unit will be subcontracted, transferred, leased, assigned or conveyed in whole or in part to any other plant, person or non-unit employees, unless otherwise provided in this Agreement. The Employer may subcontract work when all of his regular employees are working except that no event

shall road work presently performed or runs established during the life of this Agreement be farmed out. Dock work shall not be farmed out except for existing situations established by agreed-to past practices.

Overflow loads may be delivered by drivers other than the Employer's employees provided all provisions of this contract are observed. Loads may also be delivered by other agreed-to methods or as presently agreed to.

The normal, orderly interlining of freight for peddle as defined in ARTICLE 26, on an occasional basis, where there are parallel rights, and when not for the purpose of evading this Agreement shall be permitted. Alleged violations of this provision shall be submitted to the Grievance Procedure.

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No. 18091

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**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND MISCELLANEOUS TRUCK TERMINAL EMPLOYEES, LOCAL UNION No. 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

---

ON PETITION TO REVIEW AND SET ASIDE, AND ON CROSS-PETITION TO ENFORCE, AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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ARNOLD ORDMAN,

*General Counsel,*

DOMINICK L. MANOLI,

*Associate General Counsel,*

MARCEL MALLET-PREVOST,

*Assistant General Counsel,*

MELVIN J. WELLES,

JANET KOHN,

*Attorneys,*

*National Labor Relations Board.*

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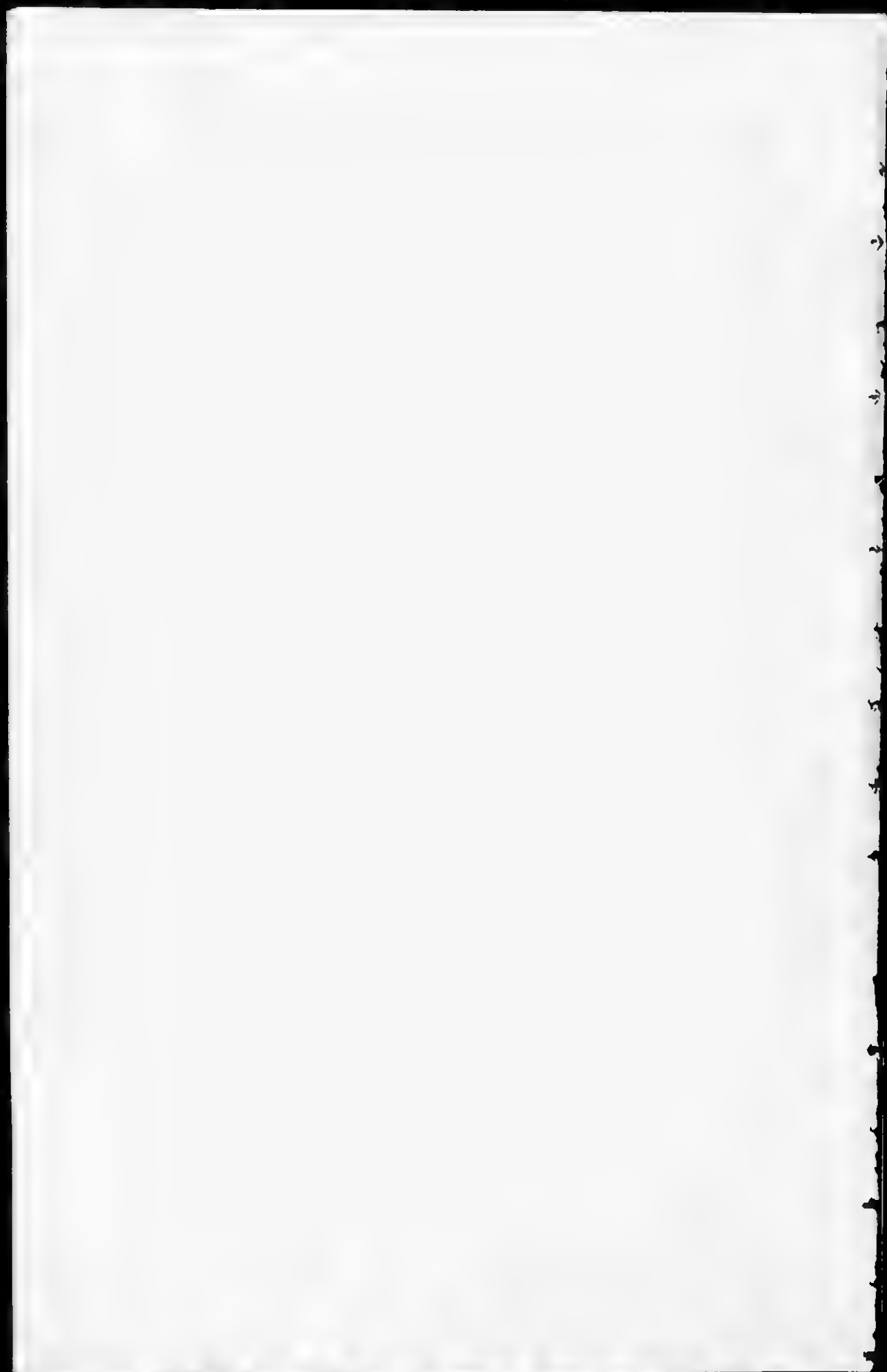
United States Court of Appeals

For the District of Columbia Circuit

FILED JAN 16 1961

*Noted in G.O. 100*  
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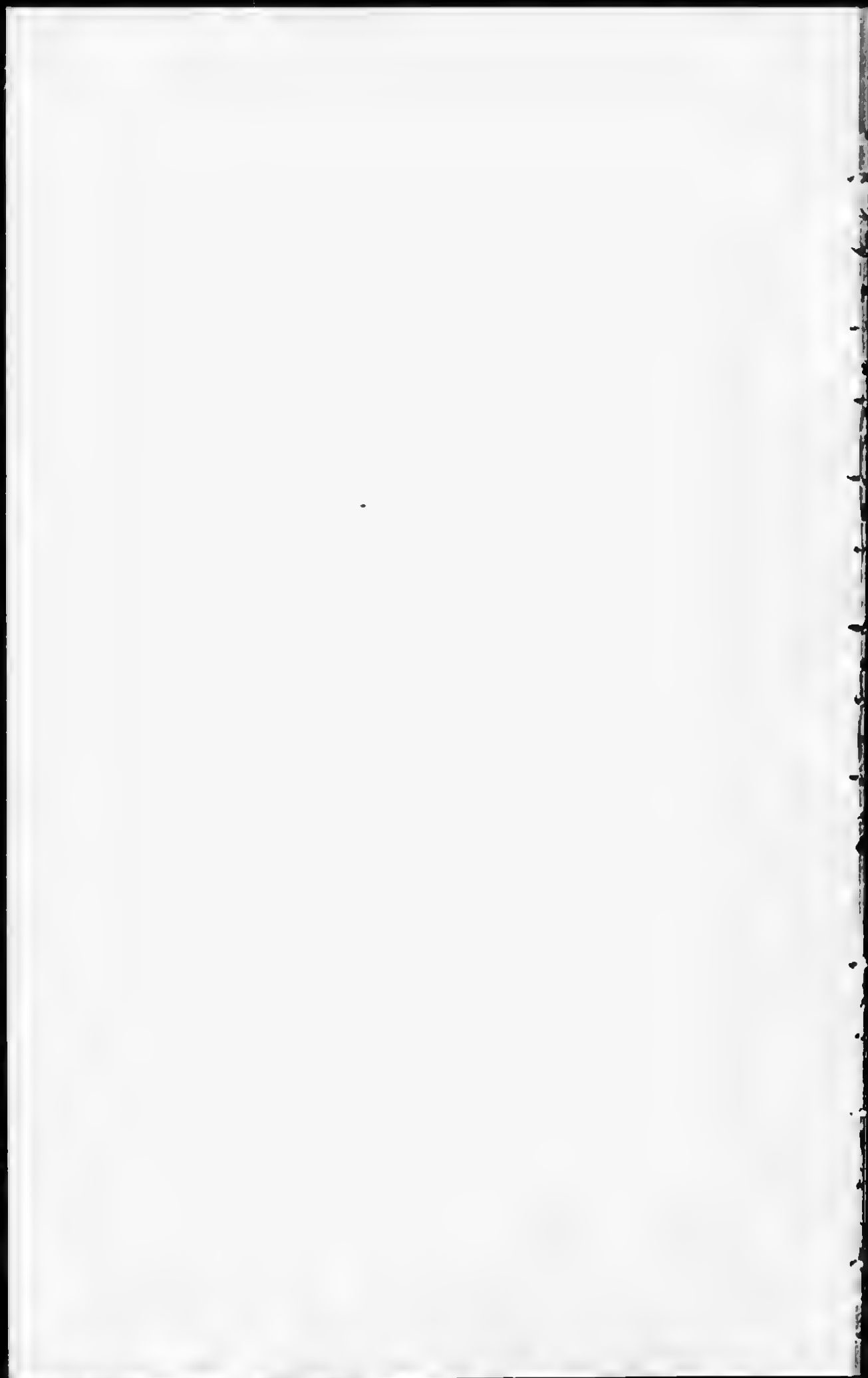




**STATEMENT OF QUESTIONS PRESENTED**

The questions presented are set forth on pages 1-2 of the Joint Appendix and on page (i) of petitioner's brief.

(1)



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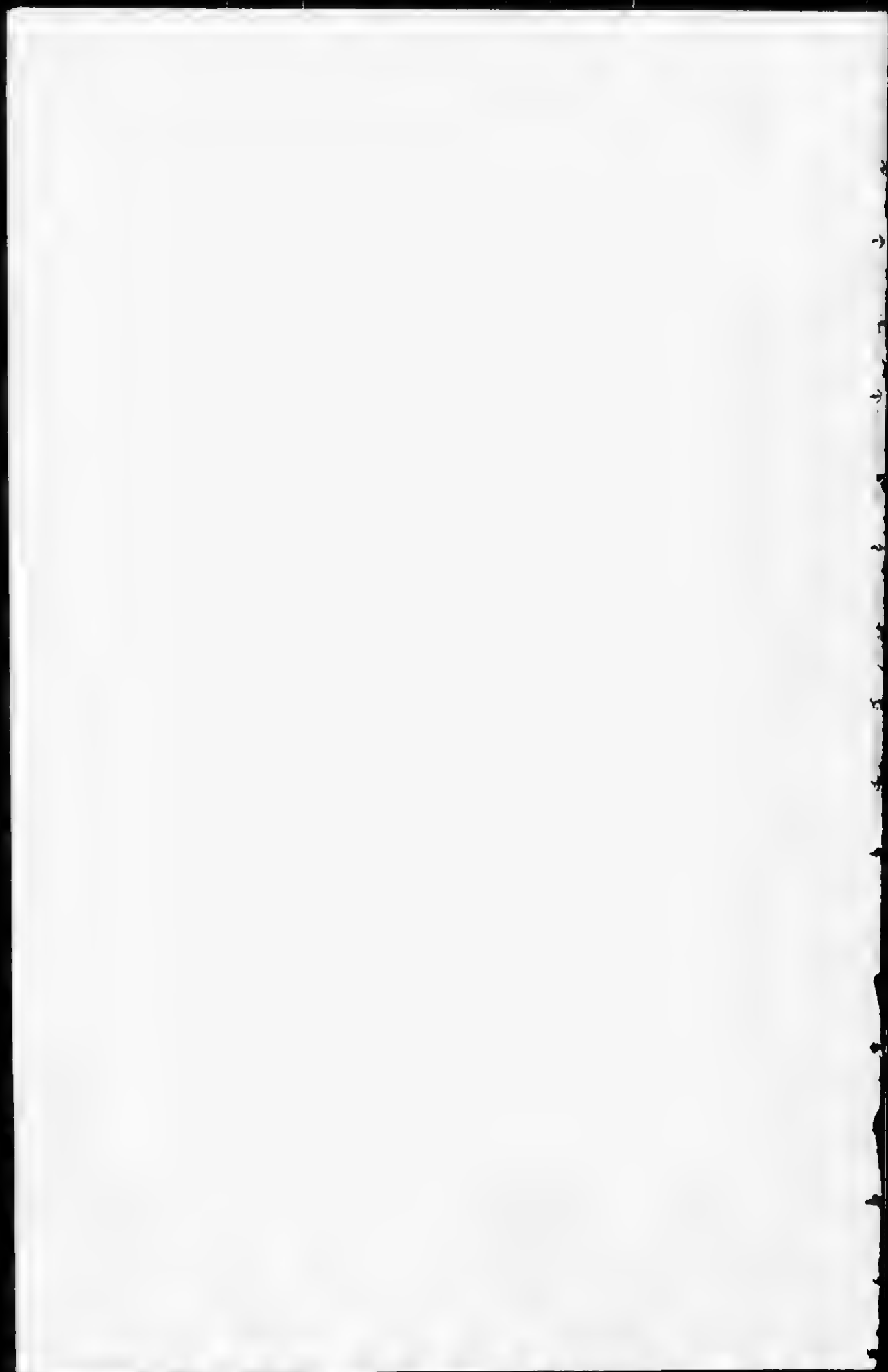
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# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 18091

MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND MISCELLANEOUS TRUCK TERMINAL EMPLOYEES, LOCAL UNION No. 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,  
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

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ON PETITION TO REVIEW AND SET ASIDE, AND ON CROSS-PETITION TO ENFORCE, AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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## COUNTERSTATEMENT OF THE CASE

The Board accepts the statement of the case as set forth in petitioner's brief except in the following particulars:

The Board did not find, nor could the record evidence cited by petitioner justify a finding that, as petitioner asserts, during the term of the 1958-1961 Packing House Agreement all deliveries of meat products from the three major packers' Chicago facilities to customers within fifty miles of the Chicago Stock Yards were "made by drivers represented by the Union employed by the packer" (Pet. Br., p. 3). Rather, the testimony reveals that such deliveries were made by drivers "represented by the Union" (J.A. 11; 151). This is the practice called for by the 1958 Agreement, wherein the work covered



and—a lesser quantum—the work assigned the packers' truck-driver employees were defined by Article XII as follows (J.A. 203-204):

Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equipment, except when there is a lack of equipment at individual plants or branches, and then all effort will be made to contract a cartage company who employs members of Local No. 710. Employer agrees to do all possible to use own equipment at all times.

Nor can it be said, as petitioner does, that while interstate meat shipments direct to the packers' Chicago customers were wholly the work of the interstate carriers' over-the-road drivers, "when a delivery is made from out of the city to a dock or terminal of a carrier in Chicago, or to a plant facility of Swift, Armour or Wilson in Chicago, \* \* \* the work of local transshipment [is] performed by *the packer's* local driver" (Pet. Br., p. 4). Petitioner's interpolation of the phrase "the packer's" is again not warranted by the record.<sup>1</sup>

#### SUMMARY OF ARGUMENT

1. The principal question in this case is the legality, under Section 8(e) of the Act, of the "New Addendum" which the Union sought from various packing companies. To understand the import of the New Addendum, it is necessary to consider the conditions giving rise to the Union's demand for it, as well as two other contract provisions, Article XII of the 1958-1961 and subsequent agreements, and a "First Addendum" proposed by the Union before it proposed the New Addendum. (Petitioner concedes the illegality under Section 8(e) of both these provisions, although claiming that its withdrawal of the First Addendum, after charges were filed and an injunc-

<sup>1</sup> Additionally, the Board of course does not agree, nor does it deem a "fact" that the restrictions here sought by the Union were an "economic issue," as petitioner describes them at page seven of its brief. Likewise, the Board does not subscribe to the concluding sentence in petitioner's statement of "The Facts"; it is pure argument.

tion suit instituted under Section 10(1) of the Act with respect to it, renders the issue of its legality moot, and its litigation pointless. Settled authority refutes the claim that the cessation of unfair labor practices, or remedial action with respect to them, precludes court enforcement of a Board order. *N.L.R.B. v. Marsh Supermarkets, Inc.*, — F. 2d — (C.A. 7, decided December 20, 1963), 55 LRRM 2017, 2018; *N.L.R.B. v. Mexia Textile Mills, Inc.*, 339 U.S. 563, 567.)

Since 1955, the major packers had been transferring their operations from Chicago to other large cities. Although deliveries to Chicago area customers emanating from Chicago facilities of the packers had been made by members of the Union—Article XII of the agreement required these deliveries to be made by employees of the packers when they had sufficient equipment, with the overflow to be done by cartage companies employing members of Local 710—shipments coming from outside the Chicago area were not required to be delivered to local consignees by Local 710 members or by employees of the packers. As a consequence of the shift of operations of the major packers to out-of-state packinghouses, the Union's control over Chicago meat deliveries diminished, markedly so during the term of the 1958 agreement. Accordingly, the Union proposed, at the outset of negotiations in 1961, contract language to give it jurisdiction over all deliveries of meat in the Chicago area wherever their point of origin. By the time the Union struck, its demand was embodied in the "First Addendum." Union Representative O'Brien explained that this was designed to redress its "real problem" in Chicago of "dwindling membership," and of "so-called gypsies making deliveries in Chicago." The First Addendum required all deliveries from out of state to be made by a carrier party to a Teamsters agreement, and that local overflow cartage be contracted only to companies under contract with the Union. When, under the pressure of charges and the institution of an injunction action, the Union changed the wording of its demands, and continued to strike for them, it submitted the New Addendum. This provision restricted both deliveries into Chicago and local overflow, as had its predecessor, but omitted references to the union status of the transportation companies,

describing functionally the business arrangements that would have flowed from the First Addendum's unlawful requirements.

The Union's concern remained the fact that the companies performing the over-the-road driving were "so-called gypsies [who] were making deliveries in the city of Chicago," and thus were doing business in a manner of which the Union did not approve. The Union's sole dispute with the packers, whom it was striking for the New Addendum designed to remedy the situation, was that they were doing business with the disapproved carriers. Although the ultimate object of the Union's strike and contract demand was more work for Union members generally, the effect of the contract proposal was necessarily a cessation of business relations between the packers and the carriers. The Supreme Court's decision in *N.L.R.B. v. Denver Building and Construction Trades Council*, 341 U.S. 675, rejected the view that conduct of this type, necessitating a cessation of business, could be characterized as "primary" even though its ultimate objective may have been legitimate.

In short, the New Addendum falls directly within Section 8(e)'s proscriptions, for it constitutes an agreement that would require a cessation, at least in part, of the business relationship between the packers and the carriers, and the disruption of existing business relationships thus caused was for the purpose, as Union Representative O'Brien stated, "to secure the work of local delivery within the Chicago area for employees of Local 710—employees represented by Local 710." This purpose manifests that the Union's real quarrel was with the fact that the carriers were not signatory to Teamster agreements, and their over-the-road drivers were not members of the Teamsters.

Petitioner's characterization of the New Addendum as a "work protection" clause is wide of the mark, for its provisions do not guard against encroachments on the existing work of unit employees, who had not performed the local delivery of out-of-state shipments to companies in Chicago in the past, but rather are concerned with work acquisition, at the expense of existing business arrangements.

Petitioner, interpreting the first part of the New Addendum as an agreement to refrain in the future from contracting

with interstate carriers for deliveries of meat to Chicago consignees, claims that Section 8(e) applies only to an agreement to "cease" doing business. The language and legislative history refute this interpretation of 8(e)'s language, for the "cease doing business" portion was clearly intended as a catch-all clause, and thus can hardly be read more narrowly than the rest of Section 8(e) which it was designed to supplement. Further, the effect of the New Addendum was plainly to cause a cessation of existing business relationships, for the services of the carriers sought to be curtailed thereby constitute the equivalent of some 250 full-time truck driver jobs. The fact that the Union had the ultimate legitimate object of obtaining more work for Union members cannot justify the infringement upon the existing business relationships inherent in the Union's demands, for Congress in Section 8(b)(4) and 8(e) has expressly outlawed conduct and contracts that constitute secondary boycotts or agreements to cease doing business.

2. The second part of the New Addendum provides that overflow work, that is, local delivery work which cannot be done by the packers' employees because of insufficient equipment, may be contracted only to a cartage company whose drivers have the same or better wages and other benefits as the packers' drivers. This provision, we submit, manifestly is a "secondary" cease doing business clause, partaking in no sense whatsoever of work definition, preservation, or even acquisition, assuming arguendo the legality of all these objectives although accomplished by a cessation of business means or contract. This work standards clause, in short, demonstrates the Union's concern with the employment conditions of employees of other employers. Once work is determined to be overflow, it is work that has to be and will be done by other employers and their employees. It is no defense to assert that the employer who gives the overflow work to another employer, because it is he who selects a "bad" employer, is "primary," for the secondary boycott provisions of the Act, including 8(e), were expressly designed to preclude just these kinds of pressure upon an employer whose sole offense is the nature of the employer with whom he does business. The Union's objections to the work standards of a particular employer permit it to

exert certain legal pressure against that employer directly, not by secondary action, and not by a contract provision to the same purpose and effect with a "neutral" employer. Congress, both in 1947 and 1959, rejected, with certain exceptions themselves emphasizing the rejection, the view that the "community of interest" among all employees doing a particular kind of work justified any and all means designed to bring sub-standard employers in a particular industry into line with the standard conditions of other employers. The exceptions relate to the garment industry, and, to a lesser degree, the construction industry. They demonstrate that Congress knew how to accommodate interdependent interests when it wished to do so, and that it wished to do so only in those two industries.

In sum, the work standards provision of the New Addendum is unrelated to the employees represented by the Union, for its concern is solely with work that by definition could not and would not be performed by them. It is thus manifestly an attempt to control the work conditions of other employers, through the threat of not receiving the work at all if they do not maintain commensurate wages and other working conditions.

3. The plain language of the First Addendum, by its limitation of interstate shipment to carriers signatory to a Teamster agreement, shows that "an object" of the Union's strike was to require the charging-party carriers' self-employed truck-drivers to join a labor organization.

4. The Board's order is well-tailored to correct the unfair labor practices found. Since Article XII(1) is concededly unlawful, the Board could, as it did, strike the paragraph, thereby leaving the parties free to negotiate a legal clause. Also warranted by the facts of this case is the Board's prohibition of violations of Section 8(e) and 8(b)(4) with respect to other employers and other labor organizations.

**I. The Board properly found that the New Addendum, like Article XII and the First Addendum, was an agreement prohibited by Section 8(e) of the Act**

At the time the Union and the packers, large and small, entered into their most recent complete collective bargaining

agreement—the Packing House Agreement of 1958–1961—the major packers had for some years been transferring their operations from Chicago to other large cities where they already had established packinghouses (J.A. 11; 151). As the Union's representative, O'Brien, admitted, since "back as late as 1955 on" the packers had been continuously shipping to Chicago customers from their out-of-state plants, with deliveries being made directly to the customers, by trucking companies not signatory to a Teamster over-the-road agreement (J.A. 157–158). The 1958 Agreement did not, however, speak to the subject. It did not in any manner inhibit either the packers' shift of operations or the manner in which deliveries were made from out of state to Chicago destinations; no more did it evince any claim by Local 710 or the Chicago packer employees whom the Union represented to any work at the out-of-state packinghouses or any services being performed for those packinghouses by other persons. What the Union did then claim, as it had for nearly 20 years, and what time revealed to be more than in the view of Congress it could claim lawfully, was dominion over all deliveries of livestock, meat and meat products from the Chicago stockyards to a point within a fifty mile radius. This the Union accomplished by Article XII of the Agreement, which, according those stockyard hauls for which the packer had sufficient equipment to its own truckdriver employees, committed the "overflow" to cartage companies "employ[ing] members of Local No. 710" (J.A. 203–204). Thus, the work "covered by" the Agreement included not only the work of the packers' employees but also overflow work, by definition not theirs.

The Union's control over Chicago meat deliveries diminished during the term of the 1958 Agreement as a consequence of the major packers' continuing shift of operations from Chicago to their out-of-state packinghouses. For, while deliveries from the packers' stockyards facilities continued to be made by union members—packer employees or union cartage company employees, depending upon whether or not the packer had equipment available—the increased quantity of meat from out of state was transported directly to Chicago customers by interstate carriers. And also during this period Congress, by the

adoption of Section 8(e) of the Act, outlawed agreements between unions and employers which, like Article XII, obligated the employer to cease doing business with "any other person" of whom the union disapproved. Section 8(e) nullified such agreements "entered into heretofore or hereafter," and made the mere entering into such a compact an unfair labor practice for both union and employer. Additionally, by an amendment to Section 8(b)(4)(A), unions were prohibited from inducing employees to strike or threatening employers as a means of forcing an employer's acquiescence to an 8(e) agreement. Notwithstanding this latter development, the Union, in its 1961 contract negotiations, not only proposed to carry forward an even more stringent version of Article XII (J.A. 14; 160, 111) but, in response to the afore-mentioned loss of control, insisted upon and struck for still further restrictions on the packers' freedom of choice as to those with whom they would continue to do business and how that business might be done.

Thus, when negotiations opened in the spring of 1961, the Union was no longer satisfied with its traditional Article XII authority over all local deliveries from the Chicago stockyard, unlawfully broad though even this claim had become. Now, the Union's negotiators disclosed, Local 710 was asserting jurisdiction over *all* meat deliveries within the Chicago area, no matter the point of origin or by whom previously made, in order to corral this work for its own members. The Union "had a real problem in Chicago," O'Brien explained, namely that "their membership was dwindling, that so-called gypsies were making deliveries in the city of Chicago", hence "they had to have some protection in the form of a contract that would restrict both pickups and deliveries in the city" (J.A. 12-13, 15; 110-111). Moreover, both O'Brien and his colleague, union vice-president Healy, "made it clear" to the packers that while Local 710 "specifically had to have some language in the contract which protected the Union in terms of deliveries and pickups in the Chicago area," the important thing was not any particular form of words but the extension of its jurisdiction over work not then being done by its members; for the Union was not concerned about phrasing so long as it obtained "some specific restrictive language" (J.A. 13, 15-16; 110, 114). Accord-



ingly, as need arose the Union varied the phraseology but not the purport of its demand. When the packers rejected the Union's initial proposals, the First Addendum was developed with its limitation of the persons permitted to make deliveries from out of state and local "overflow" deliveries, and the Union struck the entire industry to force adoption of the First Addendum by the entire industry. Then, after the Board as well as the major packers challenged the First Addendum as violative of Section 8(e), and an injunction suit was instituted pursuant to Section 10(1) of the Act, the wording was again revised and the strike continued. The New Addendum, like its predecessor, restricted both deliveries into Chicago and local overflow; it differed only in omitting reference to the union status of the transportation companies and instead describing functionally the business arrangements which would have flowed from the First Addendum's requirement that carriers and cartage companies be signatory to a Teamster contract.

The nub of the Union's concern was that the interstate carriers with whom the packers were doing business operated in a manner of which the Union did not approve. As O'Brien put it, "so-called gypsies were making deliveries in the city of Chicago" (J.A. 111). That is, Frozen Food and the others, unlike carriers signatory to the Central States or other Over-the-Road Teamster Motor Freight Agreement, transported goods direct to the customer or consignee rather than merely to city dock or the shipper's in-city receiving facility; the charging-party carriers, so to speak, transported portal-to-portal. To be sure, the Union also had a dispute with the packers, but it consisted in the fact that the packers were doing business with the disapproved carriers. Here, just as in *N.L.R.B. v. Denver Building and Construction Trades Council*, 341 U.S. 675, it was "an object" of the Union to force the struck employers to cease doing business, wholly or in part, with other companies. Indeed, the Union concedes that an effect of the addenda which it sought would have been a cessation or interruption of business relations between the packers and carriers. And while it would label that effect as "incidental" to a lawful primary purpose, clearly the fact is otherwise, for



here, just as in the *Denver* case, the Union could achieve its ultimate objective only at the expense of existing business relationships; "the only way that [the Union] could attain [its] purpose was to force [the carriers] off the [final stage of] the [interstate delivery] job. This, in turn, could be done only through [the packers'] termination of [the carriers'] subcontract[s]. The result is that the [Union's] strike [and addenda], in order to attain its ultimate purpose, must have included among its objects that of forcing [the packers] to terminate that subcontract." 341 U.S. at 688. In short, an interruption of the packers' business relations with the carriers and a permanent cessation of at least a portion of their dealings was not only an inevitable consequence of the addenda for which the Union struck, but was a necessary precondition to the Union's achieving its ultimate objective of acquiring for its members work presently performed by others. Similarly secondary in focus and impact are the "overflow" provisions of the addenda, assuming as they do that the work in question would in any event be performed by the employees of other employers, but defining who these other employers may be according to whether *their* labor policies are satisfactory to Local 710.

We turn now to the Union's contentions, and show that the Board's order is in all respects entitled to enforcement.

#### A. Article XII(1) and the First Addendum

Article XII(1) of the previous contract, carried forward unchanged in the 1961 post-strike agreements entered into between the Union and all packers other than Swift, requires that when deliveries from the stockyards are to be subcontracted, "all effort will be made to contract a cartage company who employs members of Local No. 710." The Union concedes the unlawfulness of such a compact (Pet. br., p. 54). Indeed, under the decisions of the Board and this Court, in *Highway Truck Drivers Local 107*, 131 NLRB 925, 931, enforced, 112 U.S. App. D.C. 312, 302 F. 2d 897, and *District 9, Machinists*, 134 NLRB 1363, enforced, — U.S. App. D.C. —, 315 F. 2d 33, 37, no other conclusion is possible.

Equally evident on settled law is the invalidity of the First Addendum for which the Union struck on June 1 and which was, thereafter, incorporated into signed agreements between Local 710 and seventeen employers. Both provisions of the First Addendum restricted the persons with whom signatory employers could do business according to the union status of those other persons. Thus, the first part of the Addendum decreed that all over-the-road shipments to or from Chicago "will be done" by a certificated carrier who is party to "the Central States or other Over-the-Road Teamster Motor Freight Agreement"; and the second part, making mandatory the preference ordained by Article XII(1), permitted local overflow cartage to be contracted only to companies under contract with the Union (Pet. Br., p. 56). That the Union sought by this means to maximize employment for its members—in the first part, by taking the work from the non-signatory interstate carriers' drivers, and in the second by confining the overflow (i.e., non-unit) work to persons employing union members—cannot justify either provision. It may be assumed that a union's contract demands are intended in some manner to benefit those it represents; self-interest is not the touchstone of validity under Section 8(e). The question is, rather, whether the means chosen contemplate a "boycott [of] another employer for reasons not strictly germane to the economic integrity of the principal work unit" *District 9, Machinists, supra*, 315 F. 2d at 36. And the union status of another employer plainly is not so related. "[C]ontracts which limit subcontracting to employers having a contract with the same union are illegal." *Bakery Wagon Drivers, Local 484 v. N.L.R.B.*, U.S. App. D.C. —, 321 F. 2d 353, 357.

As we read the Union's brief, it does not dispute the merits of the Board's finding that both parts of the First Addendum transgress Section 8(e). Petitioner expressly admits the invalidity of only the second part (Br., p. 54). But the vice therein—in petitioner's words, "that subcontracting cannot be limited to \* \* \* companies which have an agreement with [the Union]"—is equally present in the first part. Petitioner's sole contention, on this branch of the case, is that the Board's findings ought not be affirmed because, following the

filing of charges and the institution of Section 10(1) injunction proceedings, the Union withdrew the First Addendum. No reason is thereby shown, we submit, for denying enforcement of the Board's order. The issue is not moot, nor its litigation pointless. An unfair labor practice having been committed, the Board "is entitled to have its order enforced by the courts to prevent repetition of that unlawful conduct in the future" *N.L.R.B. v. Marsh Supermarkets, Inc.*, — F. 2d — (C.A. 7, No. 14202, decided December 20, 1963), 55 LRRM 2017, 2018. This is so despite the fact that the particular unlawful conduct may have ceased, that it cannot recur in precisely the same manner, or, indeed, even that the remedial action ordered has already been taken. *N.L.R.B. v. Local 74, United Brotherhood of Carpenters*, 341 U.S. 707, 715; *Local 1976, United Brotherhood of Carpenters v. N.L.R.B.*, 357 U.S. 93, 97 n. 2; *N.L.R.B. v. Mexia Textile Mills, Inc.*, 339 U.S. 563, 567.<sup>2</sup> Thus, as the Supreme Court has noted in a case where a union struck and picketed an employer to force compliance with an existing secondary boycott agreement, "The controversy was not rendered moot simply because, after the filing of the charges and before the complaint issued, picketing had ceased and [the union] had entered into a collective bargaining agreement containing a no-strike clause. We cannot say that there was no danger of recurrent violation \* \* \*" *Local 1976, United Brotherhood of Carpenters, supra*, affirming on this point *General Drivers, etc., Local 886 v. N.L.R.B.*, 101 U.S. App. D.C. 80, 84, 247 F.2d 71, 75.

Nor does the Union advance its argument by now asserting that its withdrawal of the First Addendum was "irrevocable," that this addendum was "nothing but an intermediate step in an uncompleted process of negotiation,"<sup>3</sup> and that it has "no

<sup>2</sup> Were this not so, secondary boycotts would often go unremedied, for the *Local 74* case, *supra*, was typical of many in which secondary pressure is applied on a construction project, which project is completed long before the termination of litigation.

<sup>3</sup> This characterization is especially odd, since the Union struck for the First Addendum and then, with those employers willing to do so, entered into a complete contract including the Addendum. Obviously, absent the filing of charges alleging the Addendum's invalidity, the contracts entered into between June 1 and June 5 would have remained, as they began, the final step in a completed process of negotiation.

prospect of revival" (Br., p. 56). In petitioner's felicitous phrase, "Ipse dixit does not substitute for evidence." Nothing in the record warrants these appellations. Indeed, it is difficult to imagine by what action the Union could have, had it wished to do so, legally bound itself to so absolute an abnegation. In any event, the record demonstrates the Union's determination to acquire hegemony over all meat deliveries in Chicago, an objective which it has never eschewed, shows also the Union's readiness to revise proposed contract language when tactically necessary. The Board found both the First and the New Addendum unlawful, and prohibited their pursuit. Should the Court enforce the Board's order as to the New Addendum alone, it is not unreasonable to anticipate that the Union will, when opportunity presents, revert to the language for which it first struck, namely, the First Addendum. Cf., *N.L.R.B. v. Local 74, United Brotherhood of Carpenters*, 341 U.S. 707, 715; *Local 1976, United Brotherhood of Carpenters v. N.L.R.B.*, 357 U.S. 93, 97n. 2.<sup>4</sup>

#### B. The New Addendum

Like the First Addendum which it replaced, the New Addendum contains two provisions, the first aimed at displacing the interstate carriers' drivers for the final phase of interstate deliveries, and the second according to the Union the right to determine to whom the packers may contract their overflow local deliveries.<sup>5</sup> In the New Addendum, as we have said, words

<sup>4</sup> Even should the Court disagree with the Board as to the lawfulness of the New Addendum, with the result that, as provided in the strike settlement agreements, bargaining would ensue on "the subject matter" of that Addendum (J.A. 22-23; 163-164), absent the Court's order enjoining the First Addendum there would be nothing to prevent the Union during bargaining from reverting to the more explicit language of the First Addendum.

<sup>5</sup> The New Addendum, in relevant part, provides that:

"The Employer agrees that all meat and meat products which originate with or are processed or sold by the Employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer by employees covered by this agreement. It is specifically understood that all deliveries to customers or consignees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement.

"In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the

have been changed. They are less explicit than the words of their predecessor the words of secondary boycott. Both purpose and effect are somewhat veiled. But if the bare words are less obviously so, their commands are nevertheless the commands of secondary boycott.

#### 1. *The first part*

The first provision of the Addendum would necessarily require an interruption of the existing business relationships between the major packers and the interstate carriers. Nor was this an unintended or coincidental effect of the provision. As O'Brien explained at the hearing, the Union sought by this means to prevent the carriers' over-the-road drivers from continuing to deliver directly to ultimate destination, to compel them instead to terminate their runs at a city dock or its equivalent, and then, as O'Brien testified, "*our local man* would make the city deliveries of the product hauled in from the various states outside of Illinois" (J.A. 153). For the Union's purpose in demanding the New Addendum was, said O'Brien, "to secure the work of local delivery within the Chicago area for employees of Local 710—employees represented by Local 710" (*ibid.*).

Petitioner, looking at the bare words of the New Addendum—or, more precisely, at its first paragraph alone—characterizes the provision as a simple, conventional, and common "work protection" agreement (Br., p. 17). Its entire ensuing analysis then assumes and rests upon this premise, i.e.; a "work protection" provision will be implied where not express, a "work protection" clause is a mandatory subject of bargaining, hence one for which a union may strike and, *a fortiori*, one which it cannot be unlawful for the employer to accept. Petitioner's extended discussion of the lawfulness of a "work protection" clause is, we submit, irrelevant here. For the New Addendum is not in any sense a provision designed to "protect" the work of the packers' Chicago truckdriver employees. In the first place, its words cannot properly be interpreted apart from their context, from the bargaining parties' understanding of their meaning and purpose, from the situation with which

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Chicago city limits, it may contract with any cartage company whose truck-drivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries."

they were designed to deal and their necessary consequences for that situation. In the second place, the thrust of the New Addendum is not "protection" of either the work or the contract standards of the packers' employees. The Addendum is not a shield against encroachments on the existing work of unit employees. It does not bar the subcontracting of their customary work. Indeed, the first provision of the Addendum is almost the converse, for it is concerned with work that has always been done by persons other than unit employees—namely, the drivers of the interstate carriers from whom the work would, by the clause, be taken. And as the Board concluded, contrary to petitioner's assertion, work *acquisition* cannot be equated with work *preservation*, at least when the work sought by the Union is presently being done, and traditionally has been done, by other companies. So this Court has squarely held in affirming the Board's finding of violations in a case where the contract clauses sought, and the business situation to which they would apply, were virtually identical with the New Addendum's first provision and the business arrangement between the packers and the interstate carriers. *Highway Truck Drivers Local 107 v. N.L.R.B.*, 112 U.S. App. D.C. 312, 302 F. 2d 897, enforcing 131 N.L.R.B. 925, 926-927, 931. In short, the work which the Unions sought to wrest from the carriers' drivers, not being work "contemplated by [the previous packinghouse] bargaining agreement" (*Retail Clerks Union Local 770 v. N.L.R.B.*, 111 U.S. App. D.C. 246, 251, 296 F. 2d 368, 373, quoted by petitioner at pp. 19-20 of its brief) nor work ever performed by the packers' own employees, was not work in which either the Union or the packer employees whom it represented had such a "legitimate economic interest" (*Bakery Wagon Drivers Local 484 v. N.L.R.B.*, — U.S. App. D.C. —, 321 F. 2d 353, 358) as to permit the Addendum's assault upon the interests and established work rights of the drivers who worked for the carriers.

As this Court, in the last-cited case, observed of subcontracting clauses, so also do clauses obligating the employer to assign work only to his own employees "*prima facie* violate" the secondary boycott provisions of the statute (*Bakery Wagon Drivers Local 484, supra*), since work assignment clauses, like subcontracting agreements, require the signatory employer to

cease or refrain from doing business with other persons. Thus, the Addendum's first paragraph, constituting an agreement by the signatory employer to cease or refrain from contracting with interstate carriers to deliver meat to Chicago consignees, plainly falls within the literal language of Section 8(e). Petitioner, apparently interpreting paragraph one of the Addendum as compelling employers only to abstain in the future from such business arrangements, i.e., to "refrain" from same, asserts that Section 8(e) is inapplicable because a transportation service is not a "product" and therefore an agreement to refrain is not prohibited (Br., pp. 25-26). In other words, as petitioner would view the statute, it forbids agreements to "cease or refrain" from dealing in another employer's products and agreements to "cease" doing business with another person, but it leaves lawful agreements to "refrain" from doing business with any other person. But the language and legislative history of the "cease doing business" clause shows that it was intended as a catch-all clause, inserted to cover any agreements within the Congressional intendment which the language of the "cease or refrain" part of Section 8(e) might not encompass. As Senator McClellan said in adding the "cease doing business" clause to the bill, it "would completely cover the problem."<sup>6</sup> To adopt petitioner's construction of Section 8(e) requires the novel approach of reading a catch-all clause more narrowly than the clause it was designed to supplement. Moreover, petitioner's reading would provide for a different result in almost identical cases. For example, if the signatory employer agreed to refrain from renting another employer's equipment, the Act would apply; but the case would be otherwise if he agreed to refrain from paying the other employer to utilize the same equipment in his behalf. Petitioner fails to suggest any evidence that Congress intended such a result. Nor can it cogently be argued that Congress used the two terms deliberately, "cease" to cover existing conduct and "refrain" to cover future business relationships. The evidence is all to the contrary: throughout debate, legislators used the two terms loosely, interchangeably, and without ascribing a

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<sup>6</sup> II Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (GPO, 1959) 1162 (hereafter, "Leg. Hist.").



particular, disparate, connotation to each.<sup>7</sup> Senator Kennedy and Representative Thompson, in their analysis of the Landrum-Griffin bill, referred *inter alia* to Section 705(e), which, in essence was adopted as Section 8(e) of the Act. Section 705(e) contained only a "cease" doing business limitation, but the analysis stated that it "unequivocally outlaws" a contract "to refrain from \* \* \* doing business." (II Leg. Hist. 1708). Again, when the "cease doing business" clause was added to the Senate bill by Senator McClellan's amendment, it did not include the words "or refrain" (*Id.* at 1162). Before the Senate adopted the amendment, it was restated without discussion so as expressly to forbid an agreement "to cease or refrain from doing business." *Id.* at 1162-1163. However, the bill as printed did not contain the phrase "or refrain"; its absence provoked no comment and, indeed, appears to have been unnoticed, a circumstance which hardly suggests that Congress meant the two words to have hard and fixed—and mutually exclusive—meanings.<sup>8</sup>

In any event, the effect of the Addendum's first part on the packers' existing business relationships would have been a cessation however that word be defined. As O'Brien admitted, since 1955 the major packers have *continuously* been shipping meat directly to Chicago customers from outside the state, using the services of non-union interstate carriers (J.A. 157-158). All of Wilson's and 90 percent of Armour's deliveries into the city are made by such carriers (J.A. 24 n. 13; 132-133, 135). The Union's expressed object was to bring this regular practice to a halt. Assuming that, as Judge Prettyman once commented, "Certainly \* \* \* every change in method [of doing business]

<sup>7</sup> Members of Congress frequently referred to Section 8(e) simply as forbidding agreements "not to do business." See, II Leg. Hist. 1432(2) (Sen. Kennedy); *id.* at 1721(1-2) (Rep. Thompson); *id.* at 1841(3) (Re. Weis).

<sup>8</sup> While the legislators who wrote and adopted a statute are plainly a better source for its exegesis than are dictionaries, here the one corroborates the other as to the overlapping meaning of the terms in question. Thus, both *Webster's Third New International Dictionary* (Merriam Co., 1961), and *Funk and Wagnalls New Standard Dictionary* (1952) list "cease" as a synonym for "refrain"; and in *Webster's Third* a "cease and desist order" is defined as "an order by an administrative agency to *refrain* from a method of competition or a labor practice found by the agency to be unfair." [Emphasis added.]



is not equivalent to a cessation" (*Retail Clerks Union Local 770 v. N.L.R.B.*, 111 U.S. App. D.C. 246, 250, 296 F.2d 368, 372, quoted in petitioner's brief at pp. 26, 31), the proposition can provide petitioner no comfort. For, by the Union's own calculation, the work in question is the equivalent of some 250 full-time jobs.\* A change in method of this magnitude, far from being *de minimis*, is truly a "cessation" of the distinctive and significant service which the carriers are now providing the packers.<sup>10</sup>

The first part of the Addendum is thus without any question within the scope of Section 8(e)'s language. Indeed, all work assignment clauses, like all subcontracting clauses, *prima facie* violate the statute. We agree with petitioner, however, that not all work assignment or subcontracting clauses, despite their "cease doing business" consequence, are within the intendment of Section 8(e). A clause which prohibits *all* subcontracting during the term of the contract, is ordinarily outside the scope of 8(e). *Ohio Valley Carpenters District Council*, 136 NLRB 977, 49 LRRM 1908; cf., *Bakery Wagon Drivers Local 484*, *supra*, 321 F. 2d at 357; *District 9, Machinists*, *supra*, 315 F. 2d at 36. Assuming that the employer is not subcontracting work at the time such an agreement is made, the purpose of the clause plainly is to regulate the relations between the employer and his own employees, to protect and preserve the employees' work and contract standards. Likewise of the work assignment clause which, by securing to the employees for the duration of the agreement the work which is theirs at its inception, is identical in function with a primary subcontracting clause. And, absent facts showing a different purpose, a clause committing to the employees tasks or work opportunities which may develop during contract term would appear primary in focus. On the other hand, a clause by which the union seeks to pre-empt work presently or customarily performed by others cannot be

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\* The packers' need for local delivery service diminished, consequent upon the shift of packinghouse operations to points outside Illinois. Between May 1958, and the Board hearing in October, 1961, as O'Brien testified, the number of truckdrivers employed by the major packers dropped from 333 to 78 (J.A. 42; 150-151).

<sup>10</sup> Plainly the carriers thought so, for they, like the packers, filed charges against the Union under Section 8(b)(4) and 8(e) of the Act.

said to have that purpose "to protect some legitimate economic interest of the employees" (*Bakery Wagon Drivers Local 484, supra*, 321 F. 2d at 358, emphasis added) which justifies clauses otherwise interdicted by Section 8(e). The natural and probable effect of this agreement is, as the Union here well knew, an infringement upon the legitimate economic interests of those doing the work, and a disruption of established business relationships. The countervailing interest of the Union in getting more of its members employed is not illegitimate, but may not be achieved at the expense of disrupting the established business relationship. This is precisely the teaching of cases in the secondary boycott area, from *Denver Building and Construction Trades Council, supra*, through *Local 5, United Association, etc. v. N.L.R.B.*, — U.S. App. D.C. —, 321 F. 2d 366, and *Bakery Wagon Drivers Local 484, supra*, i.e., that an ultimate objective of bettering the lot of union members generally, as distinct from employees of a particular employer who are represented by the union, does not suffice to justify what Congress has declared unlawful—secondary boycotts or agreements to cease doing business. In *Denver*, for example, the union's objective would have been satisfied had the general contractor hired members of the union and dismissed the non-union subcontractor engaged by the general contractor in the first place. This no more made the general contractor a "primary" employer, legitimately subject to union pressures, than the virtually identical object here makes the packers "primary" employers vis-a-vis Section 8(e)'s proscription of cease-doing-business contracts. As the Court of Appeals for the First Circuit said, in a case arising under Section 8(b)(4), "even assuming that the ultimate object of the [union's] course of conduct was to attain the assignment of work—once it sought to attain this object by proscribed activity, e.g., the banishment of [the other company which was doing the work], it violated the Act." *N.L.R.B. v. United Association, etc., Local 12*, 320 F. 2d 250, 254. This impact upon other persons, this limitation of the employer's freedom to do business with others, the Board concluded, is inconsistent with Section 8(e).

Nor can argument mask the fact that the persons for whom the Union sought to acquire the work were *not* packer em-

ployees but were, rather, members of the Union, wherever or whether employed at the time of the 1961 negotiations. The work is, most assuredly, to be taken from the carriers' drivers, but it is to be done by packer employees only when and if the packers have "sufficient equipment at any given time to deliver [their] then current sales or consignments." When such equipment is lacking, then the work may be contracted to a cartage company of whose labor policies the Union approves. With the bulk of such deliveries having for some time been made by the carriers, it is hardly likely that the packers possess the requisite equipment. Hence, under the Addendum, they could choose either to purchase the necessary trucks and hire the necessary drivers and helpers or to contract the deliveries to union-approved cartage companies. The record does not disclose, as it could not, which course the packers might choose were they to acquiesce in the New Addendum. Yet it can hardly be assumed, as petitioner's argument requires, that the packers would opt for the capital expenditures and augmented work force required to perform themselves the terminal segment of interstate deliveries. But even were the packers ultimately to determine that the deliveries would be made with their own equipment and manpower, the personnel involved would necessarily be, to a substantial extent, new employees hired in consequence of the New Addendum.

## 2. The subcontracting clause

That contractual restrictions upon subcontracting may constitute agreements proscribed by Section 8(e) is no longer open to question. *Bakery Wagon Drivers Local 484 v. N.L.R.B.*, *supra*, 321 F. 2d at 357; *District 9, Machinists v. N.L.R.B.*, — U.S. App. D.C. —, 315 F. 2d 33. The "touchstone" is "whether a particular agreement is fairly within the intentment of Congress to do away with the secondary boycott" (*District 9, Machinists, supra*, 315 F. 2d at 36), that is, "whether the contract provisions in question extend beyond the employer and are aimed really at the union's difference with another employer" (*Local 636, United Association, etc. v. N.L.R.B.*, 108 U.S. App. D.C. 24, 30, 278 F. 2d 858, 864). This Court has already heard, and in the *District 9* case rejected, petitioner's

threshold contention that because subcontracting may validly be prohibited altogether, a clause conditioning rather than prohibiting the right to do business is also of necessity lawful (Br., p. 45, see also pp. 46, 49). See 315 F. 2d at 36. When a clause conditions the right to subcontract not on the signatory employer's circumstances alone—as by permitting subcontracting only when there is current full employment in the unit, or only when the employer is for some specified reason unable to perform the work—but rather upon characteristics of the person to whom the subcontract is to be given, the “conditional leave” is *not* “a lesser included part of the absolute prohibition” nor is it “consistent in purpose with it” (Pet. Br., p. 45). A subcontracting clause that defines the persons with whom the signatory employer may and may not do business is, on the contrary, *more* than an absolute prohibition, and the added ingredient is precisely what Section 8(e) condemns, i.e., a secondary object.

The New Addendum's subcontracting clause, like its analogue in the First Addendum and also like Article XII(1), permits subcontracting, but only to persons of whose labor practices the Union approves. Whereas Article XII defines the permitted class as companies which “employ members of Local No. 710,” and the First Addendum allows companies under contract with the Union (see Pet. Br., pp. 2, 9, 54, 56), the New Addendum establishes as the criterion that potential subcontractors provide “the same or greater wages and other benefits as provided in this agreement for the making of such deliveries” (see *id.* at p. 44). The latter as well as the former limitations, we submit, “aim[s] really at the union's difference with another employer” (*Local 636, United Association, supra*). In the Board's words, the New Addendum seeks “regulation and establishment of approved conditions for employees of another employer rather than \* \* \* the definition and preservation \* \* \* of [the packers' employees'] work” (J.A. 54).<sup>11</sup>

<sup>11</sup> Since the Union shifted its demand from the First Addendum to the formulation of the New Addendum only under the pressure of litigation, and since (as petitioner concedes) both the First Addendum and Article XII(1) are violative of Section 8(e), the Board could well consider the earlier demand, as it did, in determining the real meaning of the later

Thus, a work standards clause, by its very terms, demonstrates the union's concern with the employment conditions of the employees of another employer; these are the working conditions to which it is addressed. It is not enough to say that such a clause may also protect the unit employees by discouraging the signatory employer from contracting out their work in order to take advantage of another employer's lower labor costs. In the first place, the argument proves too much. A clause that forbids subcontracting to companies not under contract with the union will have a like effect. Moreover, Congress meant "to do away entirely with contracts which come within section 8(e)" (*Los Angeles Mailers Union No. 9 v. N.L.R.B.*, — U.S. App. D.C. —, 311 F. 2d 121, 123). Since a secondary purpose brings a clause within that section even though it may have other purposes as well, a union that in fact seeks only the primary object of protecting unit employees must draft its contract precisely to achieve only that.<sup>12</sup> The clause, in short, must be "strictly germane to the economic integrity of the principal work unit" (*District 9, Machinists, supra*, 315 F. 2d at 36, emphasis added). But a clause phrased in terms of comparable work standards is not—as were this its sole purpose it could have been drafted to be—one which protects the unit employees by precluding subcontracting unless they are fully employed, or unless they lack the necessary skills or the signatory employer lacks the necessary facilities or equipment.<sup>13</sup> Yet such

clause (see J.A. 55 n. 12, citing *Sheet Metal Workers' Int'l Ass'n v. N.L.R.B.*, 110 U.S. App. D.C. 302, 308, 293 F. 2d 141, 147; and J.A. 66).

<sup>12</sup> True, this Court once suggested in dictum, in a case arising under Section 8(b)(4) of the Taft-Hartley Act, that it might consider a work standards provision "legitimate" because the union "may be" seeking a primary objective (*Retail Clerks Union, Local 770 v. N.L.R.B.*, 111 U.S. App. D.C. 246, 252, 296 F. 2d 368, 374). However, as we show above, while such "may be" an object of the clause, the clause encompasses also a secondary object. Thus, in a recent case under Section 8(e), the Court, holding unlawful a union's efforts to ban subcontracting to a disfavored employer, noted that the "legitimate economic interest" of the contractor's employees did not include the union's "demands against subcontractors" (*Bakery Wagon Drivers Local 484, supra*, 321 F. 2d at 358).

<sup>13</sup> To be sure, the New Addendum's subcontracting clause does contain a limitation like that last described, but it goes further and limits also the persons to whom this work that cannot be performed within the unit may be subcontracted. See *infra*, pp. 27-28.

restrictions as these would guarantee that the signatory employer could not contract out work in order to evade his contractual obligations to his employees.<sup>14</sup> Hence, just as there is no need for a primary subcontracting clause to go further, and attempt to dictate the working conditions in other employers' establishments, so a clause that does thus go further cannot be explained or justified as primary.<sup>15</sup>

Moreover, the New Addendum's provision would, as a practical matter, accord to the Union almost as unfettered a say

<sup>14</sup> Another example of a clause tailored to accomplish only a primary objective is that in the *Oliver* case, cited by petitioner. In *Oliver (Local 24, Teamsters v. Oliver)*, 358 U.S. 283, the provision in question regulated the minimum rental and other terms of lease for any truck "leased to a [signatory] carrier by an owner who drives his vehicle in the carrier's service," and only at such times (358 U.S. at 284-287, emphasis added). The text and history of the clause showed that its objective was to protect the carrier's wage scale against undermining by the diminution of the owner's wages for driving which might result from a rental that did not cover his costs, and to provide against a possible reduction of jobs for carrier employees could the carriers substitute owner-drivers on inadequate rental fees (*id.* at 293-295). The *Oliver* clause referred to no employer other than the signatory carrier; it did not purport to prescribe the work standards of any other person's employees; it spoke only to working conditions over which the signatory carrier had complete control; and it established no obligations for anyone else. A work standards clause, in contrast, establishes obligatory employment conditions for any other employer desiring to be eligible for subcontracts from the signatory employer.

The first *Oliver* case was decided prior to the enactment of Section 8(e), and no claim was made in the case that the clause in question violated any provision of federal law (358 U.S. at 286). While the second *Oliver* case, 362 U.S. 605, was decided after the 1959 amendment of the Act, no new issues of law were injected. Significantly, in the first of the cases the Court stated: "If there is to be this sort of limitation on the arrangements that unions and employers may make with regard to these subjects, pursuant to the collective bargaining provisions of the Wagner and Taft-Hartley Acts, it is for Congress, not the States, to provide it" (358 U.S. at 297). Congress thereafter, we submit, provided just such a limitation in Section 8(e).

<sup>15</sup> Petitioner asserts that its subcontracting clause does not regulate or establish approved conditions for the employees of others, since those conditions are "determined" either unilaterally by the other employer or by that employer and the union with which he bargains. In a purely literalistic and mechanical sense, of course, petitioner's statement is accurate: were the packers to execute the New Addendum, no legal obligations would flow therefrom for any potential subcontractor. But the same is equally true—no more and no less—in any secondary boycott situation: the boycotting union pursues its secondary object through the pressure created by boycott, not through some sort of third-party beneficiary arrangement.

as to those to whom the packers may subcontract as did the clause in the *District 9* case, *supra*. The New Addendum decrees that a prospective subcontractor must provide "the same or greater wages and other benefits as provided in this agreement \* \* \*." Thus, at the least, a signatory employer and the Union must agree as to what constitutes "the same or greater \* \* \* benefits." This is, of course, no simple, mechanical, or clerical task in a day of elaborate overtime, vacation, pension, health, and other insurance provisions. The determination of what is "commensurate" will be simple only if "the same or better" is in practice taken to mean "under this agreement." Considering the exigencies of arranging for the delivery of perishables, it is not unlikely that this is the very interpretation that would be given; and, of course, as we have pointed out earlier, this is a meaning that the Union concedes to be unlawful. It is, however, not necessary to find that the clause is in fact a "union contract" provision. In terms of the applicability of Section 8(e), it is sufficient that the clause accords to the Union a veto over the decision as to who may receive the signatory employer's subcontracts.

The Union insists that it is the national labor policy to eliminate the competition of "substandard" labor conditions, and points to the "interdependence of economic interest of all engaged in the same industry" (Br., pp. 47, 50). Apparently the Union would ignore the policy embodied in Section 8(e) and 8(b)(4), statutory provisions intended to preclude a union from enmeshing neutral employers in its disputes with others, from using its position with a contractor to force his subcontractors to conform to the union's views as to what are acceptable labor conditions. To the extent that a union objects (as it has a perfect right to do) to the work standards of any particular employer, it may exert pressure against that employer directly. It may not do so, however, by forcing another employer to cease doing business with the disfavored employer. That is the essence of a secondary boycott. Congress has consistently rejected the argument that secondary boycotts "intended to protect wage rates and working conditions should be distinguished from those in furtherance of jurisdictional



disputes.”<sup>16</sup> In the 1947 Act, Congress refused to make such a distinction between “good secondary boycotts and bad secondary boycotts.”<sup>17</sup> Again, in 1959, when Congress was considering Taft-Hartley Act amendments, this “community of interest” argument was raised. Several legislators complained that the Taft-Hartley Act had subjected secondary boycotts to the “meat-ax treatment” (2 Leg. Hist. 1833) by banning justified as well as unjustified boycotts. Extension of the secondary boycott proscriptions was opposed by them because, among other things, the 1959 amendments failed to permit the secondary boycott in even the most striking instances of employee community of interest: “The sweatshop employer, no less than any other, in present law is protected.” (II Leg. Hist. 1037).<sup>18</sup> Their pleas were rejected; the amendments to Section 8(b)(4) were enacted without the addition of any distinction between justified and unjustified boycotts.

When Senator McClellan introduced an amendment which foreshadowed Section 8(e), Senator Kennedy objected because it would outlaw a purely voluntary agreement to boycott a substandard employer:

I believe it is in the public interest for employers and unions to agree not to do business with employers who pay substandard wages and maintain substandard conditions. I believe it is proper for a union to say to employer B, “Please do not subcontract any work to subcontractors who maintain sweatshop conditions.” (2 Leg. Hist. 1195.)

While the McClellan amendment was defeated in the Senate (II Leg. Hist. 1198), the Landrum-Griffin bill as passed by the House “reinstated the essence” of its provisions (*N.L.R.B. v. Highway Truckdrivers & Helpers, Local 107*, 300 F. 2d 317,

<sup>16</sup> Thus urged President Truman, in his 1947 State of the Union Address asking for legislation to correct certain labor abuses. Vol. 2, Legislative History of the Labor Management Relations Act of 1947, 1511(2) (GPO, 1948).

<sup>17</sup> The phrase is Senator Taft’s, see Vol. 2, Legislative History of the Labor Management Relations Act of 1947, 1106(2) (GPO, 1948). See also *id.* at 1107, pointing out that the Wagner Act provided union a *direct* weapon against the “sweatshop” or substandard employer.

<sup>18</sup> II Leg. Hist. 1036(2)-1038(3) (Sen. Humphrey); *id.* at 1318(2, 3), 1424(3) (Sen. Morse).



320-321 (C.A. 3); I Leg. Hist. 619, 681; II Leg. Hist. 1700).<sup>19</sup> When the Conference Committee reconciled the differences between the Senate and House versions of Section 8(e), special exemptions were created for the garment and construction industries. See I. Leg. Hist. 934, 943-944. Thus, the first proviso to 8(e) makes the section's provisions inapplicable to an agreement relating to the contracting or subcontracting of construction site work; and its second proviso excludes garment industry employers in the relationship of manufacturer-jobber or contractor-subcontractor not only from the definitional phrases of 8(e), but also from the corresponding portion of Section 8(b) (4), thereby totally immunizing secondary boycotts involving such employers.<sup>20</sup> Congressional leaders made it clear during debates that economic conditions in these industries made exemption "absolutely essential" (II Leg. Hist. 1385, 1387, 1432, 1434, 1680-1681). And at the same time, it was emphasized that this deference to the "economic necessity" argument was being strictly limited to the named industries (I Leg. Hist. 944;

<sup>19</sup> In the House, too, there was opposition from a minority on the grounds that Section 8(e) as it appeared in the Landrum-Griffin bill was nothing more than a device to maintain substandard nonunion conditions. See, II Leg. Hist. 1673 (Rep. Porter); *id.* at 1799 (Rep. Santangelo); *id.* at 1807 (Rep. Anfuso).

<sup>20</sup> Section 8(e) in its entirety provides that:

"It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any other contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void; Provided, That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work; Provided, further, That for the purposes of this subsection (e) and Section 8(b) (4) (B) the terms 'any employer,' 'any person engaged in commerce or an industry affecting commerce' and 'any person' when used in relation to the terms 'any other producer, processor, or manufacturer,' 'any other employer,' or 'any other person' shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry; Provided, further, That nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception."

II Leg. Hist. 1387). Patently, then, Congress knew how to accommodate the "interdependence of economic interest of all engaged in the same industry" (Pet. Br., p. 47) when it wished to do so, and patently it wished to do so only in the two named industries.

In any event, it is not necessary here to determine whether a pure work standards clause would be lawful. The New Addendum's subcontracting provision is simply not such a clause. As Board Chairman McCulloch pointed out, "the fact is that the Union was concerned here not with work which the employees it represented were doing or could do, but rather with work which, by definition, they would be unable to do and which would have to be subcontracted out in any event." (J.A. 66.) The work standards limitation here applies only to the signatory employer's overflow work: "In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the Chicago city limits, it may contract \* \* \*" Since by this language the Union has ensured that the employer will not contract any work which his employees could do, the subsequent standards limitation on the overflow work necessarily does something more; it is plainly directed "toward the objective of dictating the terms and conditions upon which other employers will be permitted to do business" (J.A. 66). It is, therefore, wholly secondary. Its words "fairly suggest a concurrence between the union and [signatory employers] to boycott another employer for reasons not strictly germane to the economic integrity of the principal work unit" (*District 9, Machinists, supra*, 315 F. 2d at 36).

Indeed, the work standards restriction in the New Addendum is more obviously bad under Section 8(e) than the *District 9* type of stricture. Here, by definition, the work in question is not work that would have or could have been done by the signatory employer's employees. It is overflow work. Accordingly, the provision is not in any sense designed to protect the unit employees' work. On the contrary, this clause is simply a union effort to dictate the terms and conditions of other employers' employees. It is, therefore, of a piece with clauses by which an employer agrees not to require his employees to

work on goods coming from a union-disapproved employer, the prototypic hot cargo clause.

As if in recognition of the fact that all primary purposes have already been served by the restriction of subcontracting to "overflow" work, the Union proposes that a limitation on those who will do this outside work is "essential to minimize the risk" that the employer will violate the initial restriction and subcontract work which is not beyond his capability to perform. We fail to see how the piling up of contractual obligations can either prevent or more fully redress an anticipated contract breach. Nor do we understand upon what principle of law the Board or Court may assume that a contracting party will fail to honor its contract obligations, so that the other party is justified in erecting secondary barriers—unlawful though these may be on their face—against the breach. If a signatory employer subcontracts work for which he has the necessary equipment, then the contract is breached and the Union has its ordinary contract remedies. If, in addition, this "non-overflow" work has been given to a "substandard" subcontractor, there is but an additional contract violation and again ordinary contract remedies. The New Addendum's work standards provision can have independent meaning only if an employer, conforming to the overflow provision and subcontracting only work which would *never* be his employees', lets that work to another employer whose labor policies the Union deems unequal. This is exactly the situation to which Section 8(e) is addressed. Just as Section 8(b)(4) says that a union may not coerce an employer to compel him to cease dealing with a subcontractor whom the union will not countenance, so 8(e) bans the agreement by which the union would achieve this purpose.

## **II. The Board properly found that an object of the strike was to force or require self-employed truckdrivers to join the Union**

Section 8(b)(4)(A) of the amended statute prohibits a union from resorting to means such as a strike for the purpose, *inter alia*, of "forcing or requiring any employer or self-employed person to join any labor or employer organization." Frozen Food and the other interstate carriers whom the packers

regularly use for deliveries into Chicago "operate their business exclusively with trucks that are owned and operated by individual contractors" (J.A. 25; 145, 177-184, 187-194). These carriers are not, with one exception, parties to any Teamster over-the-road agreement (J.A. 46; 149). However, the First Addendum for which the Union struck on June 1, 1961, would require a signatory packer to use, for shipments "into and out of the Chicago city limits," only interstate carriers signatory to "the Central States or other Over-the-Road Teamster Motor Freight Agreement" (J.A. 46; 167). Hence, as the Board found, if Frozen Food and the others wished to continue to render services for the packers, they would have to become parties to a Teamster agreement and, under the Central States Agreement, recognize the Teamsters' Central States Drivers Council and Local 710 as the bargaining representative of their drivers (J.A. 58; 215, 217). In consequence, also, the carriers' self-employed drivers would have to become members of the Union (J.A. 58; 215-216, 217). Accordingly, the Board concluded that the strike, at its inception, had as "an object" the "forcing or requiring [of] self-employed truckers to join the Union, in violation of Section 8(b)(4)(i)(ii)(A) of the Act" (J.A. 58-59). Cf., *N.L.R.B. v. Local 47, Teamsters*, 234 F. 2d 296, 300 (C.A. 5).

Petitioner raises a series of objections. Its primary contention, that the matter is moot, has already been shown to be without merit (*supra*, pp. 11-13). Secondly, it asserts that the record does not show that the carriers' drivers are self-employed, but rather that they are "employers" (Pet. Br., p. 58). Manifestly, one who is an "employer" is also appropriately described as "self-employed," although he who is "self-employed" is not necessarily an "employer." Next, the Union argues that the Teamsters' Central States agreement requires union membership solely of "employees," hence, presumably, not of self-employed persons. The short answer is that, while the union security provision of the Central States agreement does indeed use the term "employees," the agreement does not use that term in a technical sense but rather to describe persons, including owner-operators, who drive for the signatory carriers (see J.A. 215-216, 217, 219, 221-222 (Art. 32, Sec. 12(a)), 223 (Art. 32,

Sec. 13), 225 (Art. 32, Sec. 18), 227 (Art. 32, Sec. 20). Finally, petitioner avers that "nothing in this record shows" that it had any interest in unionizing the carriers' drivers "or sought in any way to accomplish that purpose" (Br., p. 58). Suffice it to say, as did the Board, that it was not necessary for the General Counsel to show that the Union solicited the carriers' drivers to sign up, or demanded of the carriers (or the packers) that these over-the-road drivers join; it is enough that such a result would follow from the First Addendum "as a necessary and foreseeable result" (J.A. 58 n. 18).

### III. The Board's order is valid and proper

1. Petitioner contends that the Board should have deleted only the offending clause in Article XII(1), rather than ordering that petitioner cease maintaining, enforcing, or giving effect to it in its entirety. In other words, even though conceding that the provision is, as written, unlawful, petitioner would have the Board excise only one clause of the compound sentence comprising the bulk of Article XII(1). The Board plainly has authority, however, to order that a provision unlawful under the statute be deleted in its entirety, and the cases cited by petitioner (Br. p. 59) are not to the contrary. They hold, in essence, that the existence of an invalid provision in a contract does not necessarily require invalidation of the entire contract, and that a separate part of an agreement may be severable from the remaining parts. They do not hold that only the offending words in a single provision are subject to deletion. This is not to say, of course, that the Union and the companies cannot execute a legal clause to replace the present XII(1), which might well contain the identical language of the present XII(1) absent the "and then all effort" portion. If the Union wants such a provision, as it appears to, and is correct that it "must be completely unobjectionable" to the packers, there should be no difficulty at all in substituting a legal provision for the presently illegal one.

2. The Board's order prohibits the Union from entering into, actively maintaining, or enforcing an 8(e) agreement, not only with the large and small packers from whom the Union demanded the addenda, but also with "any other employers" (J.A.

62). The Union protests the latter phrase as an unjustifiable "extension" (Pet. Br., p. 60). Yet the Union acknowledges that it "bargains with employers other than meat packers" (*ibid.*), referring to testimony that the Union opened negotiations in 1961 by calling a meeting of all parties with whom it had a contract, there indicated that it "desire[d] to negotiate with the entire group, which was something that hadn't been done prior to that time," and *there* asserted that it "specifically had to have some language in the contract which protected *the Union* in terms of deliveries and pickups in the Chicago area" (J.A. 109-110, emphasis added). Moreover, the 1958-1961 Packing House Agreement, which of course contained Article XII(1), had been executed by non-packer employers including trucking lines (J.A. 202, 125-126, 109-110).

Also proper are parts 1 (d) and (e) of the Board's order barring further resort to the pressures proscribed by Section 8(b) (4) to force the packers "or any other employers" to cease doing business with the charging-party interstate carriers, or to force the carriers' self-employed drivers to join the Union (J.A. 62-63). "[I]t is not necessary that all of the untraveled roads to that end be left open and that only the worn one be closed" (*Bakery Wagon Drivers Local 484 v. N.L.R.B.*, *supra*, 321 F. 2d at 358 n. 17, quoting and following *Electrical Workers v. N.L.R.B.*, 341 U.S. 694, 705-706).

3. Finally, the Board had ample reason to protect the carriers' self-employed drivers from pressure to join "Respondent Union or any other labor organization" (J.A. 63). Thus, the part of the First Addendum upon which this part of the order is predicated permits carriers signatory to the "Central States or other Over-the-Road Teamster Motor Freight Agreement." Under the Central States Agreement, recognizing the Central States Drivers Council and Local 710, drivers must join Local 710, the "Respondent Union." Although the record does not show that any "other Over-the-Road Teamster Motor Freight Agreement" contains a union security provision, we may fairly assume that at least some of them do. In these circumstances, it was plainly not necessary for the Board to attempt to define and list specific labor organizations any more than does the First Addendum.

## CONCLUSION

For the reasons stated above, we submit that the petition to review should be denied and the Board's order enforced in full. Respectfully submitted.

ARNOLD ORDMAN,  
*General Counsel,*  
DOMINICK L. MANOLI,  
*Associate General Counsel,*  
MARCEL MALLET-PREVOST,  
*Assistant General Counsel,*  
MELVIN J. WELLES,  
JANET KOHN,  
*Attorneys,*  
*National Labor Relations Board.*

JANUARY 1964.





**BRIEF FOR PETITIONER**

**United States Court of Appeals**

**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 18,001

MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS  
AND MISCELLANEOUS TRUCK TERMINAL EMPLOYEES,  
LOCAL UNION NO. 710, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA,

**Petitioner,**

v.

NATIONAL LABOR RELATIONS BOARD,

**Respondent.**

On Petition to Review and Set Aside and on  
Cross-Petition to Enforce an Order of the  
National Labor Relations Board

LESTER ASHER  
MELVIN ROSENBLOOM  
130 North Wells Street  
Chicago 6, Illinois

BERNARD DUNAU  
912 Dupont Circle Building  
Washington, D. C. 20036

**Attorneys for Petitioner**

United States Court of Appeals  
for the District of Columbia Circuit

FILED DEC 12 1963

*Nathan J. Paulson*  
CLERK

(i)

### STATEMENT OF QUESTIONS PRESENTED

The issues as identified by the parties in the prehearing conference stipulation are as follows (J.A. 1-2):

1. Whether the Board properly found the New Addendum invalid within the meaning of Section 8(e) of the National Labor Relations Act, as amended.
2. Whether the issue of the validity of the First Addendum is moot and its litigation without useful purpose.
3. Whether the Board properly found that an object of the strike was to force or require self-employed truckers to join "the Union."
4. Whether the Board's order is valid and proper insofar as:
  - (a) parts 1(c), (d) and (e) extend to "any other employer";
  - (b) part 1(b) extends to Article XII(1) in toto; and
  - (c) part 1(e) extends to "any other labor organization."

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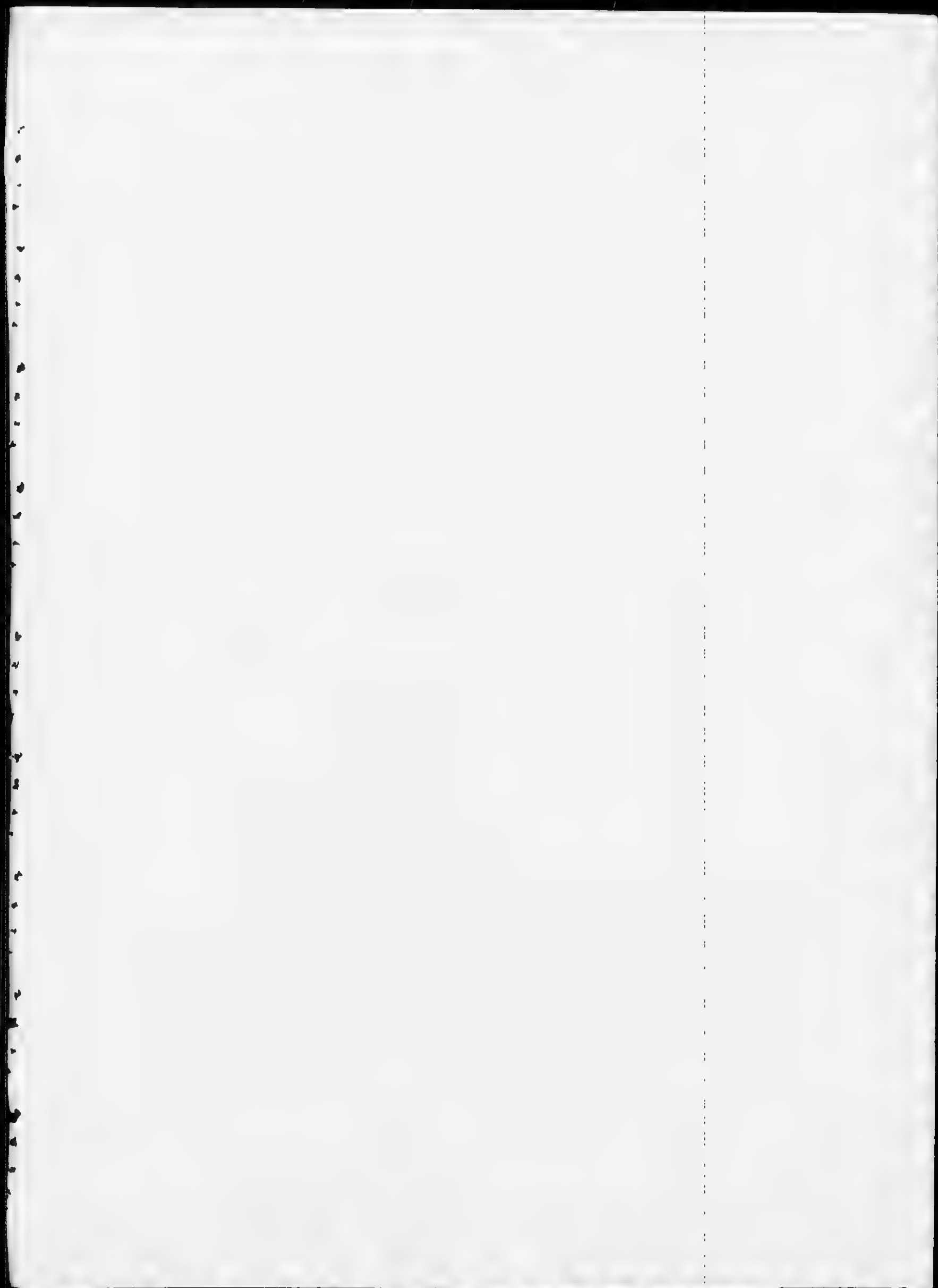
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# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 18,091

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MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS  
AND MISCELLANEOUS TRUCK TERMINAL EMPLOYEES,  
LOCAL UNION NO. 710, INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND  
HELPERS OF AMERICA,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

---

On Petition to Review and Set Aside and on  
Cross-Petition to Enforce an Order of the  
National Labor Relations Board

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## BRIEF FOR PETITIONER

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### JURISDICTIONAL STATEMENT

This case is before the Court on the petition of the labor organization named in the caption, herein called the Union, to review and set aside an order of the National Labor Relations Board issued on August 6, 1963, pursuant to Section 10(c) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. § 151, et seq.). In its answer the Board requested enforcement of its order. The jurisdiction of this Court is based on Section 10(f) of the Act. The Board's decision and order are reported at 143 NLRB No. 117 (J.A. 40-64).

## STATUTE INVOLVED

Section 8(b)(4)(i) and (ii)(A) and (B) and section 8(e) of the National Labor Relations Act are set forth in relevant part in Appendix A, infra, p. A-1.

## STATEMENT OF THE CASE

## I. The Facts

The Union represents truck drivers employed in the Chicago area to transport meat and meat products (J.A. 9). A collective bargaining agreement known as the "Packing House Agreement," for a term from May 1, 1958, to May 1, 1961, had been individually entered into with the Union by the small and large packers and others, and governed the terms of employment of the truck drivers employed in the Chicago area by the contracting employers (J.A. 9; 202-205, 125-126).<sup>1</sup> Article XII of the agreement defined the work to be exclusively performed by the truck drivers covered by the agreement (J.A. 9-10; 203-204). Part 1 of that article provides that (ibid.):

1. Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equipment, except when there is a lack of equipment at individual plants or branches, and then all effort will be made to contract a cartage company who employs members of Local No. 710. Employer agrees to do all possible to use own equipment at all times.

As of October 1961, Article XII had been in the packing house agreements in the Chicago area for about twenty years (J.A. 10; 150).

The major packers in the Chicago area with which the Union contracts are Swift & Company, Armour & Company, and Wilson & Company (J.A. 10). As of May 1958, the commencement of the 1958-1961 contract term, Swift had employed about 160 truck drivers covered by the agreement with the

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<sup>1</sup> Where, in a series of references, a semicolon appears, the references preceding the semicolon are to the Board's findings, and the succeeding references to the supporting evidence.

Union, Armour about 118, and Wilson about 55 (J.A. 10; 150-151). However, at the time of the hearing, October 1961, Swift employed about 35 or 37 truck drivers, a drop of 125 or 127, Armour about 37, a drop of 81, and Wilson about 6, a drop of 49 (*ibid.*). Thus, of a total employment of 333 truck drivers at the beginning of the contract term, the complement had fallen to 80, a reduction in employment of 253 truck drivers employed by Swift, Armour and Wilson (*ibid.*).

This sharp reduction in employment was caused by the relocation by Swift, Armour and Wilson of their operations from Chicago to other cities (J.A. 10). As explained by John T. O'Brien, secretary-treasurer of the Union, "the major packer[,] after the 1958 contract close to the middle of the contract,<sup>2</sup> began moving their operations out of Chicago proper into other large cities where they already had packinghouses established and gradually moved the operation. Every time they moved a big operation out, why, it reduced the work force. It reduced the inside workers and also reduced the drivers to the point they were no longer needed to make the pickups and deliveries in the Chicago area" (J.A. 10-11; 151). Truck deliveries of meat products to customers within a fifty mile radius of the Chicago Stock Yards from a plant facility of Swift, Armour or Wilson located in the Chicago area continued, as before, to be made by drivers represented by the Union employed by the packer (J.A. 11; 151, 105-106, 203-204). However, with the relocation of operations outside of Chicago, truck delivery of meat products to the Chicago area from these out-of-state locations by Swift, Armour and Wilson would often be made directly to the customer within the Chicago area by the over-the-road driver, thus

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<sup>2</sup> While relocation first started in 1955 (J.A. 157), it is manifest that it was executed in force during the 1958-1961 contract term, for it was then that the precipitous drop in the packers' employment of local drivers took place in Chicago. In the June 19, 1961, Progress Report of the Automation Committee, formed of representatives of Armour, United Packinghouse Workers, and Amalgamated Meat Cutters under their collective bargaining agreements of September 1, 1959, it is stated that: "In the early summer of 1959 Armour and Company announced the permanent closing of six production plants. Included were two large establishments — in Chicago and E. St. Louis — and four smaller plants in Columbus, Fargo, and Atlanta and Tifton. \* \* \* In these close-downs, Armour and Company was not unique in the packing industry. Each of the other three members of the industry's one time Big Four have closed down numbers of major packinghouses in recent years." 48 LRR 239, 240-241 (unbound volume) (emphasis supplied).

bypassing the need for the services of the local driver employed by the packer (J.A. 11; 151-152, 102, 107, 132-133, 135). Only when a delivery is made from out of the city to a dock or terminal of a carrier in Chicago, or to a plant facility of Swift, Armour or Wilson in Chicago, is the work of local transshipment performed by the packer's local driver (J.A. 11; 102, 103, 105-106, 133, 135, 151). Delivery by the packer's local driver on this occasion is the consequence of the requirement of Article XII of the agreement obligating the contracting employer when delivering by truck within 50 miles from the Chicago Stock Yards to use his own equipment when available (J.A. 11).

It was to the problem of recovering the jobs lost by the local drivers employed within the Chicago area by Swift, Armour and Wilson that the Union addressed itself in the 1961 negotiations. As explained by John T. O'Brien, its secretary-treasurer, "We attempted to draft some language into the contract that would try and recover the jobs lost by the new policy of the larger packers of having their deliveries come in from out of the state into our area here by a road-driver that not only did the local driver's work, but absorbed the city jobs that at one time belonged to members of our organization, employees living here in the city of Chicago" (J.A. 11; 152). The general means by which this objective would be accomplished would be that the "contract carrier or the common carrier would deliver the meat to the packer's plant or branch, or whatever facility he may have for receiving it; and, in turn, our local man would make the city deliveries of the product hauled in from the various states outside of Illinois" (J.A. 11-12; 153). As further elaborated by John T. O'Brien (J.A. 12; 156-157):

We were doing business with the major packing plants in the city of Chicago and we asked that they have the work done in such a fashion, that they have the loads delivered to facilities in the Chicago area and use the same operation that they had used for delivery in the city as they had when they had the packinghouses in Chicago, in place of delivering it directly to the customer around Chicago like they are doing today.

\* \* \*

We did not care how they got the deliveries into Chicago — by train, boat, or truck — as long as the local delivery men were members of our organization and we recovered the jobs



we lost through the depression, so-called depression, of plants moving out of the area. It made no difference to us how the merchandise got here, as long as our people got the work.

On February 1, 1961, the Union gave timely notice of its desire to negotiate a new agreement (J.A. 12). Thereafter, it called a meeting for April 21, 1961, of all the employers in the Chicago area engaged in trucking meat products with which it had a collective bargaining relationship (J.A. 12; 109). At this meeting John T. O'Brien explained the problem which faced the Union (J.A. 12-13; 110):

He indicated that, in his opinion, the Union had a real problem in Chicago, that the larger packers had moved out of the area, that product was being shipped into the Chicago area from out of state, that he felt that we had been able to arrive at a satisfactory settlement down through the years on economic matters, that they specifically had to have some language in the contract which protected the Union in terms of pickups and deliveries in the Chicago area, and he felt that this would be a real problem . . . .

Actual negotiations began on May 3, 1961 (J.A. 13). Negotiations "down through the years" had been conducted between the Union and the so-called packer group (J.A. 13; 126, 108, 110). The packer group at the outset of the 1961 negotiations was composed of Armour, Wilson, and a fluctuating number of smaller packers (J.A. 13). Swift had withdrawn from the packer group some years before the 1961 negotiations (J.A. 13; 121). Armour and Wilson withdrew from the packer group on May 12, 1961, and did not return for the remainder of the 1961 negotiations (J.A. 13). In previous years the history of negotiations had been that "agreement was reached between the Union and the packer group. . .; The Union then approached all other companies that they had contracts on the basis of the then agreed on agreement with the packer group, and . . . . in all cases, they each signed the same type of contract. . ." (J.A. 13; 126).

Before the first meeting on May 3, 1961, the Union had presented to the employers a comprehensive statement of proposed amendments to the packing house agreement (J.A. 14; 86). Those directly pertaining to restoration and preservation of local jobs were Article XVI, "Job Classification Jurisdiction," and Article XXXVI, "Subcontracting" (J.A. 159-160). The proposed Article XVI reads that (J.A. 159-160):



The Employer agrees not to use road drivers, or city or suburban drivers to do any work, all working belonging exclusively under jurisdiction of Local No. 710 and, accordingly, to be performed by present members of the Union or those to become members of the Union.

The proposed Article XXXVI reads that (J.A. 160):

(a) The Employer agrees to refrain from using the services of any person who does not observe the wages, hours and conditions of employment established by Labor Unions having jurisdiction over the type of services performed.

(b) For the purpose of preserving work and job opportunities for the employees covered by this Agreement, the Employer agrees that no work or services presently performed or hereafter assigned to the collective bargaining unit will be subcontracted, transferred, leased, assigned or conveyed in whole or in part to any other Company, branch, or unit, person or non-unit employees, unless otherwise provided in this Agreement. The Employer may subcontract work when all of his regular employees are working.

At the May 3 meeting, John T. O'Brien repeated what he had said at the April 21 meeting, explaining "how their membership was dwindling, that so-called gypsies were making deliveries in the City of Chicago, and that they had to have some protection in the form of a contract that would restrict both pickups and deliveries in the City" (J.A. 15; 111). No progress was made at the meeting (J.A. 15; 111-113).

An informal discussion took place on May 8, 1961 among the responsible representatives of the Union and the packer group (J.A. 15). At this meeting the Union proposed, as a way of resolving the problem of restoring and preserving local jobs, that (J.A. 15-16; 130, 205):

All work described and covered by this agreement shall be assigned to and performed exclusively by employees in the collective bargaining unit herein described and covered. No pickups or deliveries of meat and packing house products shall be made by any over-the-road, city or suburban drivers.

The representative of the packer group stated that he "didn't think this language was any different than the language they were requesting in their initial demand and that was the end of it" (J.A. 16; 130). John T. O'Brien "indicated that he wasn't particularly talking about language as proposed in the document that they had submitted to the packers. He felt that he had

some type of language that could be worked out and it might be other than they had in that document, and he also indicated that possibly setting it up as an Addendum and not making it a part of the agreement might be the answer" (J.A. 16; 114).

Before the ensuing meeting on May 12, "the majority of the packer group indicated a willingness to work out some type of compromise language which would get them off the hook on the subject of restrictions of deliveries" (J.A. 16; 114-115). No resolution of the question was achieved at the May 12 meeting (J.A. 16; 115). It was on May 12 that Armour and Wilson withdrew from the packer group (J.A. 16; 115, 125).

Further meetings were held on May 17, 22, and 23 (J.A. 16). Language to restore and preserve local jobs was evolved in the give-and-take of these meetings (J.A. 115-118). On May 23 the packer group presented to the Union in final written form the terms which would be agreeable to it to settle the question of local jobs and other economic issues which had divided the parties (J.A. 117-118, 166-168). The Union accepted these terms upon the express condition that it was an agreeable basis for settlement only "if Swift, Armour, and Wilson would go along on the same basis"; if not acceptable to Swift, Armour and Wilson, "the whole industry would be on the street" (J.A. 16-17; 118, 119, 132).

The tentative agreement thus reached, as it pertains to the subject of restoring and preserving local jobs, is headed "Addendum To Agreement" and reads that (J.A. 167):

#### ADDENDUM TO AGREEMENT

It is mutually agreed between the employer signators to this agreement and Local Union 710 that all meat and meat products which originate with the employer for truck shipment into and out of the Chicago City limits will be done by a Certificated Carrier signators to the Central States or other Over-the-Road Teamster Motor Freight Agreement.

It is also agreed that all local overflow cartage shipments of meat and meat products originating with the employer in Chicago will be done by cartage companies which are signators to this agreement.

Company owned or Company leased equipment is exempt from this addendum, except Company over-the-road drivers will

not be permitted to make retail store door delivery within the Chicago City limits. Leased equipment leased directly to the Company will be considered as Company owned equipment.

The reference to carriers who are "signators to the Central States or other Over-the-Road Teamster Motor Freight Agreement" is based on the terms of these agreements providing that "operations shall be dock to dock" without local "pickup and delivery" (J.A. 17; 216, 217-218, 227-228). As explained for the Union by John T. O'Brien, "There is a couple of clauses in there that protect the city, the local man in making city deliveries. In other words, it calls for all work performed in the city to be done by local pickup and delivery men" (J.A. 17-18; 154). Limitation of over-the-road truck shipments to carriers signatory to the over-the-road agreements would therefore effectively achieve the Union's objective of restoring and preserving local jobs (J.A. 18; 154).

Negotiations then turned to Swift, Armour and Wilson, but no agreement was reached, these packers rejecting the Addendum as a basis of settlement (J.A. 18; 86-90, 95-98, 137-140, 161-163). On June 1, 1961, the Union called a strike of all the employers in the industry, and picketed their premises (J.A. 19).

Between June 1 and June 5, 1961, the Union signed individual agreements with seventeen employers settling the strike with them (J.A. 19; 147-148, 205-208). These agreements conferred economic benefits superior to those contained in the tentative agreement previously reached with the packer group.<sup>3</sup> These agreements also included an Addendum in substantially the same form as it had been previously tentatively agreed upon with the packer group (J.A. 205-206).

#### ADDENDUM TO AGREEMENT

It is agreed by and between the Employer and the Union that the following addendum shall be a part of the collective bargaining agreement in effect between the Employer and the Union. The Employer agrees that all meat and meat products which originate with the Employer for truck shipment into and out of the Chicago city limits will be delivered only to a city dock and not

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<sup>3</sup> Cf. Res. ex. 5, including a work week provision, with G.C. ex. 11, which does not contain it; J.A. 126-129.

directly to a consignee and [4] will be done by a certificated carrier who is a party to the Central States or other Over-the-Road Teamster Motor Freight Agreement.

All local overflow cartage shipments of meat and meat products originating with the employer in Chicago will be transported by cartage companies who are parties to the collective bargaining agreement referred to above.

Company owned or Company leased equipment is exempt from this addendum except that Employer over-the-road drivers will not be permitted to make retail store door deliveries within the Chicago city limits. Leased equipment leased directly to the Company will be considered the same as employer owned equipment.

This Addendum is referred to in the Board's opinion as the First Addendum.

On June 5, 1961, a preliminary injunction proceeding pursuant to Section 10(1) of the National Labor Relations Act was instituted (J.A. 20). On the same day the Union presented Swift, Armour, and Wilson with a new Addendum in place of the Addendum which the Union had theretofore proposed to them (J.A. 20); from the time of the presentation of the new Addendum "the old Addendum was no longer in the picture" (J.A. 94). The new Addendum reads that (J.A. 20-21; 165, 213-214):

#### ADDENDUM

It is agreed by and between the Employer and the Union that the following addendum shall become a part of the collective bargaining agreement entered into between the Employer and the Union.

The Employer agrees that all meat and meat products which originate with or are processed or sold by the Employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer by employees covered by this agreement. It is specifically understood that all deliveries to customers or consignees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement.

In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales

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<sup>4</sup> The words "will be delivered only to a city dock and not directly to consignee and" were deleted from eleven of the agreements and included in six of the agreements (J.A. 147-148).

or consignments within the Chicago city limits, it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

This addendum shall not in any way be construed to diminish the description of the work covered by this agreement as set forth in any provision of this agreement.

In the Board's opinion this Addendum is referred to as the New Addendum.

The strike was settled on June 6, 1961 (J.A. 22). On that day memoranda of agreement were executed by the Union, Swift, Armour, and Wilson setting forth the terms of settlement of the economic issues (J.A. 22). An oral understanding was also reached to the effect that the agreements in final form which would thereafter be executed would incorporate the new Addendum as an appendix with the stipulation that bargaining and a strike to secure its adoption would be deferred until its validity was determined by the Board and a court of last resort (J.A. 22). This oral understanding was reduced to final written form in the strike settlement agreement which was later executed in August 1961 (J.A. 22-23; 163-164):

1. The Union agrees on behalf of itself and its members, except as specifically provided otherwise below, that it shall not engage in a strike, stoppage, slowdown, or other suspension of work, or picketing, regarding the provision hereto annexed and marked "Exhibit A" [the New Addendum] (now the subject of charges before the National Labor Relations Board), or any variation thereof.
2. The Company agrees that if and when a decision of the National Labor Relations Board or (in the event that such decision of the National Labor Relations Board is the subject of appellate review within sixty (60) days of such decision) a final determination by a court of last resort concludes that "Exhibit A" is valid, it shall, upon thirty (30) days' notice in writing from the Union, bargain collectively regarding the subject matter of the aforesaid "Exhibit A".
3. In the event that there is a final determination by a court of last resort that the aforesaid "Exhibit A" is valid, and, thereafter, the parties (the Company and the Union) fail to reach an agreement regarding the subject matter referred to in "Exhibit A", the Union may engage in a strike and the Company may engage in a lockout with reference thereto.



On June 6, 1961, at the same time that agreement was reached with Swift, Armour and Wilson, by mutual agreement with all other employers in the industry with whom the Union had negotiated in 1961, the Union canceled all agreements which incorporated the First Addendum and had been entered into between June 1, 1961 and June 5, 1961, and no agreements of the kind consummated during that period remained in effect after that time (J.A. 23; 148). On June 6, 1961, at the same time and in addition to the agreements reached with Swift, Armour and Wilson, a new agreement was reached with all of the other employers in the industry, and the terms of this new agreement contain the same provision for strike settlement and the New Addendum as was concluded with Swift, Armour and Wilson (J.A. 23; 149, 212-214).

In the 1961 agreements with Armour, Wilson and all other employers in the industry (except Swift), Article XII was continued and carried over in the unchanged form in which it had existed for twenty years past (J.A. 23; supra, p. 2). The continuation of Article XII was not an issue in the 1961 negotiations; it did not contribute to and was not an object of the strike (infra, p. 54). Serious economic issues other than the addenda divided the Union and all employers in the industry throughout the 1961 negotiations and these issues were not finally resolved until the termination of the strike.<sup>5</sup> In addition to securing satisfactory resolution of these economic issues, an object of the strike was to recover and preserve local jobs with the packers by securing a contractual commitment from them that their work of local shipment of meat and meat products in the Chicago area would be performed by the local drivers employed by them in that area.

## II. The Board's Conclusion And Order

The major substantive issue presented on this review is the validity under section 8(e) of the Act of the New Addendum. By a divided 3 to 2 vote the Board invalidated the first part of the New Addendum requiring that truck

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<sup>5</sup> G.C. exs. 7, 12, 14; cf. Res. ex. 5, including a work week provision, with G.C. ex. 11, which does not contain it; J.A. 99, 126-129, 140. As to G.C. exs. 7, 12, and 14 (the memoranda of agreement with Swift, Armour and Wilson concluded on June 6, 1961), note the substantial interlineated changes shown on the face of the memoranda.

shipment by a meat packer to its customers within Chicago shall be made "from the Chicago city dock or other Chicago distribution or terminal facility of the employer within the Chicago city limits by employees covered by this agreement" (J.A. 49-53). By a divided 4 to 1 vote the Board also invalidated the second part of the New Addendum providing that, in the event the packer does not have sufficient equipment, "it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries" (J.A. 54-56).

The Board further found the First Addendum violative of section 8(e) of the Act (J.A. 45-48), rejecting the Union's contention that the issue of its validity was moot and its adjudication pointless (J.A. 57). In addition, based on its view that effectuation of the First Addendum would require self-employed truck drivers to join the Union, the Board concluded that "the strike from June 1 until the First Addendum was withdrawn on June 5, was also for an object of forcing or requiring self-employed truckers to join the Union in violation of Section 8(b)(4)(i)(ii)(A) of the Act" (J.A. 58-59). Finally, the Board found Article XII(1) violative of section 8(e) insofar as it provided that, in the event of insufficient equipment, "all effort will be made to contract a cartage company who employs members of Local No. 710" (J.A. 48-49).

The Board's order requires desistance from (1) proscribed action (J.A. 2) to require an employer to agree to the New Addendum; (2) compliance with the whole of Article XII(1); (3) entering into or observing an agreement prohibited by section 8(e); (4) engaging in a strike or cognate action to cause a cessation of business with motor carriers; and (5) engaging in a strike or cognate action to require self-employed truckers to join any union (J.A. 61-63).

#### STATEMENT OF POINTS

1. The New Addendum is not invalid under section 8(e) of the Act.
2. The issue of the validity of the First Addendum is moot and its adjudication pointless.
3. There is no evidence to support the finding that an object of the strike was to require self-employed truckers to join the Union.

4. Assuming the validity of its findings, the Board's order is nevertheless improper insofar as (a), part 1(b) nullifies the whole of Article XII(1); (b), parts 1(c), (d), and (e) extend to "any other employer"; and (c), part 1(c) extends to "any other labor organization."

### SUMMARY OF ARGUMENT

I. The first part of the New Addendum divides truck delivery from origin to destination into two segments: (1) delivery to "the Chicago city dock or other Chicago distribution or terminal facility of the Employer," and (2) delivery from these points to the customer within the Chicago area. The employer is free to bring its product to the dock or other distribution or terminal facility in Chicago in any way it chooses, but local delivery from these points must be made by its local drivers covered by the agreement. The provision is thus a typical work protection agreement by which the performance of defined work is committed exclusively to the employees covered by the agreement. Such an agreement is wholly different from the hot cargo agreement prohibited by section 8(e). A hot cargo agreement requires the contracting employer to cease doing business with another person who is in the union's disfavor because of a labor dispute or other objectionable employment condition prevailing at that person's establishment. The cessation of business is designed to further the union side of the dispute or to protest the objectionable condition. A work protection agreement, on the one hand, and a hot cargo agreement, on the other, have in common only the happenstance that the consequence of each may be that the contracting employer may refrain from or cease doing business with another person. But the reasons behind the consequence are so different that the prohibition of the hot cargo agreement does not invalidate the work protection agreement. Under the latter the "restriction upon subcontracting seeks to protect the wages and job opportunities of the employees covered by the contract by forbidding the primary employer to have work which his employees might do, performed outside his own shop - something quite different in both purpose and effect from arranging to have secondary employers boycott nonunion



firms or specified employers or groups of employers because their products or labor policies are objectionable to the union." Cox, Law and the National Labor Policy, 34 (1960).

II. The second part of the New Addendum provides that, if the employer does not have sufficient equipment to make shipment with its own employees, "it may contract with any cartage company whose truck drivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries." The validity of this limitation is established by the validity of an agreement confiding the performance of defined work to the employees covered by it. The limitation is essential to minimize the risk that the employer may subcontract the work, not because equipment is unavailable, but because it is cheaper to do the work through another whose costs are lower because his employment standards are lower. Hence, to preserve the integrity of the valid requirement that the work be done by the employer with his own employees when equipment is available, it is essential that the work be subcontracted to none but persons who maintain the same or better labor standards when equipment is not available. This protects the work and the contract standards for its performance.

III. The issue of the validity of the First Addendum is moot and its adjudication pointless. Cancellation of a contested provision before entry of an order requiring that action, at least in a situation showing enduring renunciation of it, moots the question of its validity. Standard Oil Co. v. United States, 283 U.S. 163, 181-182. But lack of technical mootness would not itself justify adjudication. "The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive." United States v. W. T. Grant Co., 345 U.S. 629, 633. Put in the circumstances of this case, there must be a reasonable basis for apprehension that the terms of the First Addendum will be renewed in the future. The Board has not made, and on this record there would be no evidentiary support for, this requisite finding.

IV. There is a total lack of any evidentiary support for the finding that between June 1 and 5 an object of the strike was to require self-employed truckers to join the Union.

V. The Board found violative of section 8(e) only that part of Article XII(1) providing "and then all effort will be made to contract a cartage company who employs members of Local No. 710." Yet the Board's order voids the whole of Article XII(1). The Board is without power to invalidate all "where the excess may be severed and separately condemned as it can here." N.L.R.B. v. Rockaway News Supply Co., 345 U.S. 71, 79. Also improper is the Board's extension of the order to "any other employers" and to "any other labor organization."

### ARGUMENT

I. **The First Part of the New Addendum — Defining the Work to be Exclusively Performed by the Employees Covered by the Agreement — Is Not a Hot Cargo Agreement Prohibited by Section 8(e) of the National Labor Relations Act But Constitutes a Valid Object of Concerted Activity.**

The New Addendum divides into two parts. The first part defines the work to be performed exclusively by the local drivers in the particular packer's employ. The second part provides that, when the packer does not have sufficient equipment to make delivery with vehicles driven by his own employees, "it may contract with any cartage company whose truck drivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries." In this section of the brief we treat with the validity of the first part of the New Addendum (pp. 15-44). In the next section we treat with the validity of the second part (pp. 44-56).

A. **The First Part of the New Addendum Is a Conventional Work Protection Provision.**

Analysis begins with identifying the precise scope of the first part of the New Addendum. Its reach and purpose are illuminated by the first part of Article XII. In being for more than twenty years, the latter provides that (supra, p. 2):

Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equipment. . . .

The plain function of this provision is to guarantee that the work of truck delivery of the product within a fifty mile radius of the Chicago Stock Yards shall be performed only by the drivers in the company's employ. It preserves the work for the drivers covered by the agreement by precluding its performance by others.

Article XII fulfilled its function of safeguarding the work so long as the employer's plant facilities, from which the product was shipped within the fifty mile radius of the Chicago Stock Yards, were located within the Chicago area. But once the employer began to relocate his plant facilities to cities other than Chicago, and made truck delivery by over-the-road drivers from out-of-Chicago sites directly to customers within the Chicago area, the work available to the local drivers was drastically diluted. Graphic demonstration of the consequent loss of work was the sharp reduction from 333 to 80 in the number of drivers employed by Swift, Armour, and Wilson in the Chicago area in the three year 1958-1961 period (supra, pp. 2 - 3).

The first part of the New Addendum is directed to restoring and preserving the local delivery work which the local drivers had previously performed but which they had lost. It therefore provides that:

The Employer agrees that all meat and meat products which originate with or are processed or sold by the Employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer by employees covered by this agreement. It is specifically understood that all deliveries to customers or consignees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement.

By requiring that the employer's product destined for customers within Chicago "shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer by employees covered by this Agreement" the work of local delivery is effectively restored to the local driver. Thus the delivery work from origin to destination is divided into two segments, (1) delivery to "the Chicago city dock or other Chicago distribution or terminal facility of the Employer," and (2) delivery from these points to the customer within the

Chicago area. The employer is free to bring its product to the dock or other distribution or terminal facility in Chicago in any way it chooses, but local delivery from these points must be made by its local drivers covered by the agreement.

Article XII and the New Addendum thus come down to the same thing: each defines the work to be local shipment of the product and requires that it be performed exclusively by the employer's own drivers covered by the agreement. Such a work protection agreement — variously called a "work jurisdiction," "work assignment," or "no subcontracting" agreement — is conventional and common. "Exclusive assignment of particular work functions to a certain class of employees or bargaining unit is a typical and widespread provision of union-management agreements. . . ." Long Island News Corp., 35 LA 840, 844.<sup>6</sup> The reports of the Board are replete with illustrations.<sup>7</sup> The consequence of the contractual assignment of work to a class of employees is that the work may not be performed by any others. It may not be performed by supervisors; it may not be performed by other rank-and-file employees of the same employer; and it may not through subcontracting be performed by the employees of other employers or by self-employed persons. As the Board has stated, the employer "may not evade this work assignment by transferring the work from one enterprise to another." Local No. 48, Sheet Metal Workers, 119 NLRB 287, 291.

<sup>6</sup> "LA" refers to Labor Arbitration Reports published by the Bureau of National Affairs, Inc.

<sup>7</sup> "The jurisdiction of stage electricians covers the maintenance, repair, placement and operation of spotlights and other lighting devices used to light the set in connection with such television performances." National Association of Broadcast Engineers, 103 NLRB 479, 486. "Only employees under this agreement shall operate technical equipment . . . ." National Association of Broadcast Engineers, 105 NLRB 355, 360. "The work covered by this Agreement shall include all of the following work . . . ." Radio & Television Broadcast Engineers Union, Local 1212, 114 NLRB 1354, 1356. "[A]ll sheet metal work shall be done by employees who are journeymen sheet metal workers or registered apprentices." Local No. 48, Sheet Metal Workers, 119 NLRB 287, 291. The agreement "is meant to cover the loading and unloading of railroad cars, trucks, teams, lights, barges, transferring freight in and out of storage places, sorting, piling and other miscellaneous work not performed by members of the Deepsea and Coastwise locals." International Longshoremen's Association, 127 NLRB 35, 36. See also, Local 4, International Brotherhood of Electrical Workers, 138 NLRB 335, 339-340.

Article XII and the New Addendum are thus usual work protection provisions. Compacts of this kind are wholly different from the hot cargo agreement prohibited by section 8(e). A hot cargo agreement requires the contracting employer to cease doing business with another person who is in the union's disfavor because of a labor dispute or other objectionable employment condition prevailing at that person's establishment. The cessation of business is designed to further the union side of the dispute or to protest the objectionable condition. A work protection agreement, on the one hand, and a hot cargo agreement, on the other, have in common only the happenstance that the consequence of each may be that the contracting employer may refrain from or cease doing business with another person. But the reasons behind the consequence are so different that the prohibition of the hot cargo agreement does not invalidate the work protection agreement. The "restriction upon subcontracting seeks to protect the wages and job opportunities of the employees covered by the contract by forbidding the primary employer to have work which his employees might do, performed outside his own shop — something quite different in both purpose and effect from arranging to have secondary employers boycott non-union firms or specified employers or groups of employers because their products or labor policies are objectionable to the union." Cox, Law and the National Labor Policy, 34 (1960). See also, Aaron, The Labor-Management Reporting and Disclosure Act of 1959, 73 Harv. L. Rev. 1086, 1118-19 (1960).

"The Board has held that a contract which prohibits all subcontracting is legal as a legitimate device to protect the economic integrity of the bargaining unit." Bakery Wagon Drivers Union No. 484 v. N.L.R.B., 321 F.2d 353, 357 (C.A.D.C.); see also, District No. 9, IAM v. N.L.R.B., 315 F.2d 33, 36 (C.A.D.C.). In this case, in keeping with this holding, the Board has not invalidated the first part of Article XII. Yet, despite its precise similarity in structure, purpose, and effect, a narrowly divided Board, by a 3-2 vote, has inconsistently invalidated the first part of the New Addendum.

This basic self-contradiction bespeaks the Board's want of a coherent rationale by which to reach and justify its decision. It is therefore essential to probe in depth the meaning of the distinction between the valid work



protection agreement and the prohibited hot cargo agreement. For it is lack of identification and understanding of the statutory premises on which the difference is predicated which leads the Board to its decision based on inconsistent intuition rather than disciplined reason.

**B. A Work Protection Provision is Inherent in a Collective Bargaining Agreement and Efforts to Obtain It Constitute Protected Activity.**

The inherently valid character of a work protection agreement is manifest upon consideration of a common and recurrent dispute between employers and unions. The dispute relates to the employer's engagement of independent outside contractors to do work which has been or can be done by the employer's own employees where the collective bargaining agreement is silent upon the subject. The employer typically contends that in the absence of an express prohibition in the agreement it is free to contract work to others, while the union maintains that the agreement contains an implied covenant against divesting the unit of employees of work it is capable of performing.

There is a growing body of significant and probably preponderant thinking that, despite the absence of an explicit contractual restriction, implicit in the very being of an agreement is a limitation against subcontracting to others work which the employees covered by the agreement can do. "To allow the Company, after signing an agreement covering standards of wages and conditions for . . . jobs and employees, to lay off the employees and transfer the work to employees not covered by the agreed standards would subvert the Contract and destroy the meaning of the collective bargaining relation."<sup>8</sup> This Court has given judicial confirmation to this view (Retail Clerks Union Local 770 v. N.L.R.B., 111 U.S. App. D.C. 246, 296 F.2d 368, 373):

The tacit but essential premise of a bargaining agreement is that the employer employs the employee to do certain work. When he agrees in good faith to terms and conditions, he represents that if the employees accept and abide those terms and

<sup>8</sup> A. D. Juilliard Co., Inc., 21 LA 713, 724.

conditions they will have this employment. We think employees, even absent a specific anti-subcontracting provision, could enforce the right to work contemplated by a bargaining agreement.

Other courts have reached the same conclusion.<sup>9</sup> And so, without a specific restriction, an implied limitation upon subcontracting work nevertheless arises out of the very nature of a collective bargaining agreement.<sup>10</sup> An agreement is pointless if the employees covered by it have no work to do.

But whether or not one subscribes to the view that the agreement itself implies limitations upon subcontracting, and without regard to whether the scope of the implied restrictions is narrow or broad, the very existence of this body of responsible thinking conclusively establishes the point relevant to this case. For it shows that, if subcontracting control to protect the jobs of the employees may be fairly implied from the agreement even when it is silent on the subject, subcontracting control surely may be negotiated and expressly written into the agreement. In a word, work jurisdiction or assignment — who shall do the work and conversely to whom the work shall not be subcontracted — is a mandatory subject of collective bargaining. This Court has upheld the position that bargaining on "proposed subcontracting" is obligatory.<sup>11</sup>

<sup>9</sup> UAW, Local 391 v. Webster Electric Co., 299 F.2d 195, 197 (C.A. 7); Clarke v. Ward Baking Co., 53 LRRM 2566 (D.C. App., June 5, 1963); Coulon v. Carey Cadillac Renting Co., 50 LRRM 2888 (S.D. N.Y., Aug. 2, 1962); Selb Mfg. Co. v. I.A.M., District 9, 305 F.2d 177 (C.A. 8).

<sup>10</sup> For a survey of arbitration decisions on the subject, see Celanese Corp., 33 LA 925, 942-948; Square D Co., 37 LA 892, 896-898. For recent illustrations of enforcement of implied limitations upon subcontracting, see Pacific Laundry & Dry Cleaning Co., 39 LA 676; Gaslight Club, 39 LA 15; Federal-Mogul -Bower Bearings, Inc., 37 LA 867; Mead Paper Co., 37 LA 342; Container Corp., 37 LA 252; Vulcan Rivet & Bolt Corp., 36 LA 871; Socony Mobil Oil Co., 36 LA 631.

<sup>11</sup> Fibreboard Paper Products Corp. v. N.L.R.B., 53 LRRM 2666, 2668, 2669 (C.A. D.C., July 3, 1963). See also, Town & Country Mfg. Co., 136 NLRB 1022, enforced, 316 F.2d 846 (C.A. 5); Timkin Roller Bearing Co., 70 NLRB 500, 504, reversed on other grounds, 161 F.2d 949 (C.A. 6), and cited with approval by the Supreme Court in Local 24 Teamsters v. Oliver, 358 U.S. 283, 295; General Tire and Rubber Co., 135 NLRB 269, 279. But see N.L.R.B. v. Adams Dairy, Inc., 54 LRRM 2171 (C.A. 8, Sept. 12, 1963).

For the range of agreements on the subject, see Cox and Dunlop, Regulation of Collective Bargaining by the National Labor Relations Board, 63 Harv. L. Rev. 389, 413-415 (1950); Subcontracting Clauses in Major Collective Bargaining Agreements, Bull. No. 1304, Bur. Lab. Stat., Dept. of Lab. (1961).

A subject upon which bargaining is mandatory cannot be a subject upon which it is illegal to contract. A contractual commitment defining the work to be exclusively performed by the employees covered by the agreement resulting from obligatory negotiation on work jurisdiction or assignment cannot therefore be invalid. Indeed, notwithstanding the prohibition against "jurisdictional strikes" contained in Section 8(b)(4)(D) of the Act, the Board holds that a union may strike to require an employer to observe the work assignment incorporated in the collective bargaining agreement.<sup>12</sup> As the Board has explained, to "fail to hold as controlling herein the contractual preemption of the work in dispute would be to encourage disregard for observance of binding obligations under collective-bargaining agreements and invite the very jurisdictional disputes Section 8(b)(4)(D) is intended to prevent."<sup>13</sup> The Board could hardly describe the "contractual preemption of the work" as a "binding obligation" if incorporation of it into an agreement were illegal. Furthermore, to the extent that work jurisdiction or assignment is restricted by statute at all, it is regulated solely through Section 8(b)(4)(D) in conjunction with Section 10(k). Section 8(b)(4)(D) prohibits a strike to compel "any employer to assign particular work to employees in a particular labor organization or a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft or class. . . ." In this case there is no claim, and there could not be,<sup>14</sup> that the

<sup>12</sup> National Association of Broadcast Engineers, 105 NLRB 355, 363-365; Radio & Television Broadcast Engineers Union, 114 NLRB 1354, 1359; Local No. 48, Sheet Metal Workers, 119 NLRB 287, 291; International Union of Operating Engineers, 121 NLRB 1073, 1076; Local 173, Wood, Wire & Metal Lathers Union, 121 NLRB 1094, 1109, n. 37, 1112, n. 45; International Longshoremen's Association, 127 NLRB 35, 38.

<sup>13</sup> National Association of Broadcast Engineers, 105 NLRB 355, 364.

<sup>14</sup> The Board's premise is that the over-the-road drivers who deliver from out-of-Chicago directly to customers within the Chicago area are self-employed persons (J.A. 52, 58-59). Accepting the accuracy of this premise for present purposes, the New Addendum would limit the work of these self-employed persons to the over-the-road portion of the trip, leaving local delivery to be performed by local drivers represented by the Union. To the extent that this division of work is a contested assignment of particular work, the controversy pertains to assignment to self-employed persons in preference to employees, but Section 8(b)(4)(D) is limited exclusively to controversies over assignment as between groups of "employees." Section 8(b)(4)(D) therefore does not apply. The result is no different assuming employee rather than self-employed status. As among groups of "employees," there is nothing in the record to

(footnote continued on following page)



Union's strike in any way violated Section 8(b)(4)(D).<sup>15</sup>

The New Addendum is thus altogether within the scope of protected activity. In fact, the Supreme Court has upheld the validity of just such an agreement between a motor carrier and a union, stating that it was an "'agreement upon a subject matter as to which federal law directs them to bargain.'" Local 24, Teamsters Union v. Oliver, 362 U.S. 605, 606. As summarized by the Supreme Court, the agreement "provide[d] that hired or leased equipment, if not owner-driven, shall be operated only by employees of the certificated or permitted carriers and require[d] those carriers to use their own available equipment, before hiring any extra equipment." Ibid. And another provision of that agreement, the validity of which was upheld by the Supreme Court in toto, was that, when an over-the-road carrier used an owner-driver, "owner-driver operations to be terminal to terminal, except where no local employees to make such deliveries or otherwise agreed to in this contract. . . ." Local 24, Teamsters Union v. Oliver, 358 U.S. 283, 304.

We now show that Congress did not by Section 8(e) undo what it otherwise so carefully preserved.

C. Section 8(e) of the Act Prohibits Only the Hot Cargo Agreement, a Type of Agreement Wholly Different in Terms and Purpose From a Work Protection Agreement.

The claim that section 8(e) of the Act prohibits a work protection agreement is based on a wholly simplistic reading of the words of that section.

14 (continued from preceding page)

show either that there exists a relevant group of "employees" other than those represented by the Union, or that if such an unidentified group does exist it desires that the work be assigned to it rather than to the employees represented by the Union. Absent either, there can be no violation of Section 8(b)(4)(D). Teamsters Local 107 (Safeway Stores, Inc.), 134 NLRB 1320; Teamsters Union, Locals 70, 85 (Hills Transportation Co.), 136 NLRB 1086; Sheet Metal Workers, Local 272 (Valley Sheet Metal Co.), 136 NLRB 1402; Penello v. Local Union No. 59, Sheet Metal Workers, 195 F. Supp. 458 (D. Del.).

<sup>15</sup> Even if the controversy were within the scope of Section 8(b)(4)(D), under Section 10(k) "it is the Board's responsibility and duty to decide which of two or more employee groups claiming the right to perform certain work tasks is right and then specifically to award such tasks in accordance with its decision." N.L.R.B. v. Radio and Television Broadcast Engineers Union, Local 1212, 364 U.S. 573, 586. Congress replaced the jurisdictional strike by an impartial determination of which group is entitled to disputed work and not by the employer's unilateral determination of that question.

The argument runs as follows: section 8(e) prohibits entry into an agreement by which an employer "ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person . . ."; an agreement committing the performance of defined work to employees covered by it is conversely an agreement to refrain from or cease subcontracting that work to outside persons; it is therefore pro tanto an agreement between an employer and a union by which the employer undertakes not to do business with any other person; ergo it is prohibited.

This relentless literalism does not survive an analysis of the terms, purpose, and history of section 8(e).

1. The Terms of Section 8(e) Considered in the Light  
of the Cognate Terms Employed in Section 8(b)(4)(B)  
Prohibit Only an Agreement to Sanction a Secondary  
Boycott — the Hot Cargo Agreement.

As we have said, section 8(e) prohibits a union and an employer from entering into an agreement:

whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person . . . .

Section 8(b)(4)(B) of the Act (formerly Section 8(b)(4)(A)) prohibits a union from exerting pressure where an object of it is:

forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person . . . .

The two quoted clauses are almost literal counterparts. But for the use of the words "handling, using, selling" in section 8(e) as distinguished from the sequence of the same words "using, selling, handling" in section 8(b)(4)(B), and but for the use of the words "in any of the products of any other employer" in section 8(e) as distinguished from the words "in the products of any other producer, processor, or manufacturer" in section 8(b)(4)(B), the two clauses are precisely identical. And the minute variation cannot matter.

The words of section 8(b)(4)(B) have an authoritatively settled meaning. "This provision could not be literally construed; otherwise it would ban most strikes historically considered to be lawful, so-called primary activity." Local 761, International Union of Electrical Workers v. N.L.R.B., 366 U.S. 667, 672. Instead, the "impact of the section was directed toward what is known as the secondary boycott whose 'sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it.'" Id. at 672. "The substantive evil condemned by Congress in § 8(b)(4) is the secondary boycott . . . ." International Brotherhood of Electrical Workers v. N.L.R.B., 341 U.S. 694, 705. "At the same time that §§ 7 and 13 safeguard collective bargaining, concerted activities and strikes between the primary parties to a labor dispute, § 8(b)(4) restricts a labor organization and its agents in the use of economic pressure where an object is to force an employer or other person to boycott someone else." N.L.R.B. v. Denver Bldg. & Const. Trades Council, 341 U.S. 675, 687. It must therefore be interpreted to harmonize "the dual congressional objectives of preserving the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes and of shielding unoffending employers and others from pressures in controversies not their own." Id. at 692.

The words in section 8(b)(4)(B) thus prohibit the secondary boycott. The identical words in section 8(e) must therefore prohibit the agreement to sanction a secondary boycott. The same words cannot have a different meaning when employed in 8(e) as when used in 8(b)(4)(B). The secondary boycott is thus the mischief at which both sections are aimed. And the same literalism which would expand 8(e) beyond that meaning has already been rejected as to the cognate wording of 8(b)(4)(B).<sup>16</sup> And so, as with 8(b)(4)(B), "literalism is not the touchstone for construction of section 8(e). The question

<sup>16</sup> Local 761, International Union of Electrical Workers v. N.L.R.B., 366 U.S. 667, 672; Seafarers International Union v. N.L.R.B., 105 U.S. App. D.C. 211, 265 F.2d 585, 591; Local No. 24, Teamsters Union v. N.L.R.B., 105 U.S. App. D.C. 271, 266 F.2d 675, 680; Local No. 662, Radio and Television Engineers, 133 NLRB 1698, 1704, n. 10.

rather is whether a particular agreement is fairly within the intendment of Congress to do away with the secondary boycott." District No. 9, I.A.M. v. N.L.R.B., 315 F.2d 33, 36 (C.A.D.C.).

An agreement to commit the performance of defined work solely to the employees covered by it is not an agreement to engage in a secondary boycott. A strike to obtain contractual preemption of the work is not a secondary boycott. We have already shown the exclusively primary character of the controversy (supra, pp. 19-22). The dispute is over who shall do the work. The dispute is between the Union representing the employees who want the work and their employer who has it within his own power to allocate the work to them. The strike is against the employer to bring him to accede to the union's work demands in precisely the same way as in the case of a strike exclusively over wages which the union requests but the employer refuses to grant. No pressure is exerted against a neutral employer to cause him to exercise his influence on the primary employer in the union's favor. A strike to enforce, and therefore necessarily a strike to secure, contractual preemption of defined work is thus not a secondary boycott. Retail Clerks Union Local 770 v. N.L.R.B., 111 U.S. App. D.C. 246, 296 F.2d 368, 373 (C.A. D.C.); Haughton v. Columbia River District Council No. 5, 294 F.2d 766 (C.A. 9); International Longshoremen's Local Union No. 19, 137 NLRB 119; Local 545, Operating Engineers, 139 NLRB No. 50, 51 LRRM 1372. The agreement is therefore not one prohibited by section 8(e).

Even pitching the argument on an exclusively literal level, no agreement prohibited by section 8(e) is made out in this case. The work in issue is local truck shipment of meat and meat products. The work is thus a transportation service. The first part of section 8(e), like section 8(b)(4)(B), pertains solely to dealing in the "products" of another. A transportation service is not a "product." Hence the first part of section 8(e) does not apply to it. This leaves the second part of section 8(e) which, like section 8(b)(4)(B), pertains to "cease doing business with any other person." The New Addendum causes no cessation of business. The relevant business is between the packers and the over-the-road carriers. The consequence of the New Addendum is that, instead of shipping directly to the customer in the

Chicago area, the over-the-road carrier would deliver to the "Chicago city dock or other Chicago distribution or terminal facility of the Employer" (*supra*, p. 16). The packers thus remain free to do business with the over-the-road carriers but in a different way. "Certainly, however, every change in method is not equivalent to a cessation." Retail Clerks Union Local 770 v. N.L.R.B., 111 U.S. App. D.C. 246, 296 F 2d 368, 372 (C.A. D.C.). Accordingly, strictly literal application of the terms of section 8(e) does not invalidate the New Addendum.

But the overriding factor which subordinates competing literalisms is that the words of section 8(e) are not new. They have their precise counterpart in section 8(b)(4)(B). And, just as 8(b)(4)(B) is limited to prohibiting the secondary boycott, 8(e) is limited to prohibiting an agreement sanctioning a secondary boycott.

**2. The Purpose and History of Section 8(e) Confirm  
That It Prohibits the Hot Cargo Agreement Only.**

The purpose and history of section 8(e) confirm the meaning disclosed by its text read in the light of the settled interpretation given the cognate wording of section 8(b)(4)(B). The beginning point of the history of section 8(e) is the Supreme Court's decision in Local 1976, Carpenters v. N.L.R.B., 357 U.S. 93. The Supreme Court held that a secondary boycott was not privileged by an employer's promise in advance of the event that it would not do business with another employer if and when in the future a union had a dispute with that other employer. The contracting employer was free to observe his promise, but if he chose not to, the union could not strike or picket him to enforce it. In addition, the Supreme Court noted that "There is no occasion to consider the invalidity of hot cargo provisions as such" (*id.* at 107), and it declined to say that "it may not, in some totally different context not now before the Court, still have legal radiations affecting the relations between the parties" (*id.* at 108). Finally, the content of a hot cargo agreement may be discerned in relationship to the hot cargo agreement employed in motor transportation appearing in Genuine Parts Co., 119 NLRB 399, 400, a decision which the Supreme Court considered at length in its opinion (357



U.S. at 104, 108-111). The hot cargo agreement in Genuine Parts pertained to picket line observance and refusal to handle unfair goods at the premises of a wholly uninvolved employer in furtherance of a stranger labor dispute; it had nothing to do with work protection.

This was the state of the law as to hot cargo agreements when consideration of the 1959 amendments to the Taft-Hartley Act began. The bill reported by the Senate Labor Committee did not contain any provision dealing with the subject. The minority on the Committee criticized this omission among others. The minority expressed its "intention to offer amendments . . . on the floor of the Senate" (S. Min. Rep. No. 187, 86th Cong., 1st Sess., 72, in 1 Leg. Hist. LMRDA 468), explaining that under a hot cargo agreement which it sought to invalidate "the employer agrees not to handle what the union chooses to call 'hot goods,' 'unfair materials,' and 'black-listed products.'" Id. at 79-80, in 1 Leg. Hist. LMRDA 475-476; see also 105 Cong. Rec. 5920. On the Senate floor an amendment was thereafter adopted limited to invalidating hot cargo agreements with motor carriers. 105 Cong. Rec. 6556-58, in 2 Leg. Hist. LMRDA 1161-63. Extension of the invalidation to employers other than motor carriers was expressly rejected. Ibid.

In the House, the House Labor Committee reported a bill which also limited the invalidation of hot cargo agreements to those entered into with motor carriers. H. Rep. No. 741, 86th Cong., 1st Sess., 58, 60, in 1 Leg. Hist. LMRDA 816, 818. The House Report stated that this prohibition reached an agreement by which "trucking firm, A, . . . would not truck nor require his employees to handle any freight which was 'hot' or 'unfair' because it came from an employer engaged in a labor dispute." It specifically pointed out that the wording used, carried over from "NLRA section 8(b)(4) (A)", "preserved the established distinction between primary activities and secondary boycotts." Id. at 20-21, in 1 Leg. Hist. LMRDA 778-779; see also, id. at 51, 80, in 1 Leg. Hist. LMRDA 809, 838. (Emphasis supplied.)

The minority of the House Labor Committee criticized limiting the invalidation of the hot cargo agreement to motor carriers. Id. at 97, in 1 Leg. Hist. LMRDA 855. On the House floor the House voted a general invalidation

of hot cargo agreements. 105 Cong. Rec. 15710, 15859, 15891, in 2 Leg. Hist. LMRDA 1645, 1691, 1700-01. In conference the Senate managers yielded to the House managers and the prohibition in its present form emerged from conference and was finally enacted. H. Rep. No. 1147, 86th Cong., 1st Sess. 26, 27, 39, in 1 Leg. Hist. LMRDA 943; 105 Cong. Rec. 17899, 17919-20, 18153-54, in 2 Leg. Hist. LMRDA 1432, 1453, 1738-39.

In the course of the legislative evolution leading to its ban, every description of a hot cargo agreement in the House and Senate confined its reach to the secondary boycott.<sup>17</sup> The upshot was succinctly expressed by Senator Goldwater: "They've plugged one more [loophole] which is the secondary boycott in futuro, or to put it more plainly, it's the agreement by an employer to permit a secondary boycott to be carried on against him. That's the hot cargo." 105 Daily Cong. Rec. A8358 (Sep. 24, 1961), in 2 Leg. Hist. LMRDA 1829.

This history does not permit the least doubt that section 8(e) is directed exclusively at agreements sanctioning a secondary boycott.<sup>18</sup> It plainly appears that the identifying attribute of the prohibited agreement is that the neutral contracting employer is required to cease doing business with another person to further a labor dispute or to protest other disfavored employment conditions existing at that other person's establishment. Nothing in the prohibited hot cargo agreement resembles a work protection agreement. They differ in terms, in purpose, in origin and evolution. Illegalization of the hot cargo agreement leaves the work protection agreement wholly untouched. The New Addendum is therefore entirely outside its reach.

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<sup>17</sup> 105 Cong. Rec. 3951-52 (Senator McClellan), 6556 (Senator Kennedy), 6670 (Senator Curtis), 17674 (Senator Goldwater), 15195 (Congressman Rhodes), 15552 (Congressman Elliot), 105 Daily Cong. Rec. A4308, May 21, 1959 (Congressman Kearns), A6654, August 3, 1959 (Congressman Wolf), A8248, September 15, 1959 (Congressman Hagen), in 2 Leg. Hist. 1007, 1162, 1197, 1386, 1543, 1588, 1750, 1777, 1818.

<sup>18</sup> The legislative material summarized in this section is set forth in extenso in Appendix B, *infra*, pp. B1-B7.

**D. The Board Majority's Disposition Does Not Meet the Issue.**

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Our analysis of the issue and the Board majority's disposition of it, "so far as reaching a common level of meaning and understanding, . . . intellectually passed as ships in the night."<sup>19</sup> It is difficult to treat with the majority's view because it is not oriented to any coherent and principled rationale of the statutory scheme. Almost uniformly its observations are disjointed comments irrelevant in law and erroneous in fact. Thus:

**1. The View That the Consequence of the New Addendum Would be Cessation of Business.**

The majority states that the "major defect" of the New Addendum is that, as a consequence of its adoption, "the packer would have been forced either to completely stop doing business with Frozen Food and the other interstate carriers, or to change the manner of its operations by curtailing the scope of such business with the interstate carriers by withdrawing from them the intra-city portion of the deliveries directly to customers and consignees in the Chicago area" (J.A. 50, see also, J.A. 51).

The element thus identified is cessation of business or a change in its form. But this result flows indiscriminately from either a work protection agreement or a hot cargo agreement. The cessation-of-business feature on which the Board seizes fails to distinguish between the two and engulfs both. Yet it is patent that Congress, while prohibiting the hot cargo agreement, continued to safeguard the work protection agreement. To identify an agreement as hot cargo rather than work protection in reliance upon a characteristic which is common to both is, therefore, to obliterate the line which divides the two and to preclude any meaningful way of differentiating between them.

The irrelevance of the element on which the Board latches is illustrated by its failure to invalidate the first part of Article XII. In being for more than twenty years, it provides that "Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago

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<sup>19</sup> N.L.R.B. v. H. E. Fletcher Co., 298 F.2d 594, 602 (C.A. 1).



Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equipment . . ." (*supra*, p. 2). In the very words of section 8(e) this is an agreement whereby an "employer . . . agrees . . . to cease doing business with any other person . . ." Any employer entering into this agreement binds himself not to contract with a cartage company to do his delivery work. Any employer who, prior to entry into this agreement, used the services of a cartage company, binds himself to cease doing business with that company. But the Board properly concluded that these factors were irrelevant because they flowed from a work protection agreement. And the identical factors which are irrelevant in determining the validity of the first part of Article XII are just as irrelevant in determining the validity of the first part of the New Addendum.

The Board has forgotten the lesson it had itself taught. As we have shown (*supra*, pp. 23-25), the cessation of business proscribed by section 8(e) is identical with that forbidden by section 8(b)(4)(B) in banning secondary boycotts. In determining the reach of the secondary boycott ban, cessation of business was found to be an irrelevant criterion, for this circumstance existed whether the labor action taken was primary or secondary in character. All primary strikes and picketing have cessation of business as an object; indeed, "that is the only sanction they can have."<sup>20</sup> And so, it was long ago concluded, the "cease doing business with any other person" proscribed by section 8(b)(4)(B) "must be read with the implicit condition" that it "be accomplished by secondary, but not primary means. Within the area of primary conduct a union may lawfully persuade all persons . . . to cease doing business with the struck employer."<sup>21</sup> The identical wording of section 8(e) requires the identical conclusion that the only cessation of business prohibited by it is that flowing from a hot cargo agreement (a device for exerting secondary pressure) and not from a work protection agreement (a primary compact designed to secure contractual preemption of defined work

<sup>20</sup> L. Hand, J., in *Douds v. International Longshoremen's Asso.*, 224 F.2d 455, 459 (C.A. 2), cert. denied, 350 U.S. 873.

<sup>21</sup> *Schultz Refrigerated Service, Inc.*, 87 NLRB 502, 504.

for the employees covered by the agreement). It is simply impossible to distinguish between the two by looking to the cessation of business consequence which is common to both. "The question rather is whether the particular agreement is fairly within the intendment of Congress to do away with the secondary boycott."<sup>22</sup> And since one cannot distinguish the secondary boycott from primary labor action by cessation of business, neither can one distinguish a hot cargo from a work protection agreement by the same uninformative factor.

Finally, the Board is wrong even pitching the argument on the exclusively literal level it posits. As we have shown (supra, pp. 25-26), the consequence of the New Addendum would be simply to alter the way in which the packers and the over-the-road carriers deal with each other, and not to require that they cease doing business. "Certainly, however, every change in method is not equivalent to a cessation." Retail Clerks Union Local 770 v. N.L.R.B., 111 U.S. App. D.C. 246, 296 F.2d 368, 372. And there is simply not an iota of evidentiary support for the Board's alternative hypothesis that a consequence of the New Addendum would be to require the packer "to completely stop doing business with Frozen Food and the other interstate carriers . . ." (J.A. 50). Ipse dixit does not substitute for evidence. The result is that the Board's position is insupportable even on the basis of the irrelevant literalism it invokes.

And so, as Chairman McCullough and Member Brown observed in dissent, "the Union may insist on bargaining with the packers with respect to contractual provisions which are designed to retain, reclaim, or obtain work of the type now being performed by unit members, despite the possibility that a successful insistence in that respect might entail changes in the present relationship between the packers and the independent haulers who are making local deliveries as the final step in their interstate hauling" (J.A. 64-65).

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<sup>22</sup> District 9, I.A.M. v. N.L.R.B., 315 F.2d 33, 36 (C.A.D.C.).

2. The View That the New Addendum Sought Work Never "Customarily Performed" by the Employees Covered by the Agreement.

The Board majority states that, in seeking an exclusive assignment of the work of local shipment of products having an out-of-Chicago origin, the New Addendum strives to secure work "never customarily performed by" the employees covered by the agreement (J.A. 50). This view is irrelevant in law and erroneous in fact.

(a) The Irrelevance of the View in Law.

Assuming for the moment that the work sought by the New Addendum was new to the employees covered by the agreement — we presently show that this is inaccurate — it can make no slightest difference. The Board's unarticulated premise is that a work allocation agreement is outside the scope of section 8(e) if it operates to retain work already assigned by the employer to the employees, but is within the scope of section 8(e) if its purpose is to secure work for the employees which the employer had not previously assigned to them. But this bifurcation wholly misconceives the character of a provision defining exclusive work jurisdiction or assignment. Whether it operates to retain work or to secure work, the subject of the provision is work. Its function is to allocate work. It contractually commits the employer to assign particular work to a particular class of employees. It does not make the least difference, functionally or analytically, whether the provision (a) contractually confirms an existing and undisturbed assignment of work, (b) regains an assignment of work which had formerly existed but had been withdrawn, or (c) obtains for the first time an assignment of work to employees to whom the work had never before been allocated. Regardless of the preexisting status of the work, it is still the allocation of work to which the provision is directed, and that is the identifying mark of a work jurisdiction or assignment agreement.

Employment security is at the heart of such a contractual preemption of the work whether the work falls within class (a), (b), (c), or an admixture. Disputes in collective bargaining over work allocation relate indiscriminately to work in all three classes. The historical claim to the work is a relevant

but not decisive determinant in resolving the merits of a work assignment controversy at the bargaining table, or before the Board when it decides a jurisdictional dispute, or before an arbitrator or other private tribunal when the disputants choose that method of settlement.<sup>23</sup> But the absence of an historical claim to the work, whatever its relevance in settling the underlying merits of a claim over who shall do the work, does not at all contradict the character of the controversy as a dispute over work allocation, nor the character of a contested provision as a work allocation provision. And if it is a work allocation provision, it is simply outside the purview of section 8(e). The legality of the provision for the purpose of section 8(e) cannot turn on the classification of the source of the work in dispute.

For example, in this case, suppose the New Addendum had actually been adopted; thereafter, for two years work had been assigned in accordance with it; and at the end of two years its legality was first challenged. It is impossible to believe that the validity of the New Addendum would at that time turn on answers to such questions as (a) does the work constitute an existing and undisturbed assignment because in being for two years? (b) is two years long enough to foreclose inquiry into the original status of the work when the provision was first adopted? and (c) what was the original status of the work? Common sense tells that these questions would be irrelevant, and if they are irrelevant after the agreement has been in effect two years, they are just as irrelevant at its inception.

Finally, it is noteworthy that a disinterested and informed student of labor relations, in expressing his opinion that section 8(e) does not touch this type of agreement, used two examples in which the work allocated was new to the employees to whom the provision assigned it. Aaron, The Labor-Management Reporting and Disclosure Act of 1959, 73 Harv. L. Rev. 1086, 1118-1119 (1960). His first illustration is as follows (ibid.):

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<sup>23</sup> For a summary of NLRB decisions showing that an historical claim to work is but one of many relevant considerations in deciding a jurisdictional dispute, see 1963 Report of the Committee on Development of Law Under National Labor Relations Act, ABA Section of Labor Relations Law, vol. III, pp. 206-231 (mimeo ed.); 27 N.L.R.B. Ann. Rep. 178-180 (1962).

Suppose, for example, that an employer who formerly had certain kinds of work performed by subcontractors, away from his plant, agrees to the following new provision in the collective bargaining agreement: "All work shall be performed on the employer's own premises; there will be no work contracted out during the term of this agreement."

His second illustration is as follows (id. at 1119):

Suppose the subcontracting provision obligates the employer to cease dealing with an outside maintenance company which formerly performed janitorial services at the employer's place of business.

In this case, on the assumption that the work was new to the employees, the New Addendum is no different from either of these examples, and like them is perfectly lawful.

(b) The Inaccuracy of the View in Fact.

The Board's factual premise is in any event wholly erroneous. It is simply not true that the employees covered by the agreement "never customarily performed" the work of local shipment when the product had an out-of-Chicago origin (J.A. 50). For the fact is that the packer's own drivers still do this work as a regular part of their job. As the Board itself found, "when a delivery is made from out of the city to a dock or terminal of a carrier in Chicago, or to a plant facility of Swift, Armour, or Wilson in Chicago, . . . the work of local transshipment [is] performed by the local driver" (J.A. 11). This finding is required by uncontroverted evidence (J.A. 102, 103-104, 133, 135, 151). Illustrative of the situation is the testimony of Armour's vice president for transportation and distribution (J.A. 135):

Q. . . . Will you describe the type of deliveries that these carriers . . . make for Armour and Company from points outside the State of Illinois to points within the City of Chicago?

A. These shipments consist of a truckload direct to an Armour facility or a truckload direct to a customer, or a combination of shipments, on one truck, with as many as four stops including the destination which involves, in some cases, all customers or a combination of our own facilities and customers on the same load.

Thus an out-of-Chicago shipment may terminate in whole at a packer's facility, in whole at a customer's premises, or in part at each. And, as the



Board found, to the extent that it terminates at a packer's facility, "the work of local transshipment [is] performed by the local driver," and this "is the consequence of Article XII of the agreement" obligating the packer when delivering by truck within fifty miles from the Chicago Stock Yards to use his own equipment when available (J.A. 11).

The packer's local driver is thus even now hardly a stranger to local shipment of the product despite its out-of-Chicago origin. It is therefore inaccurate for the Board to say that the local driver "never customarily performed" this work. He still does it. All that can accurately be said is that the local driver does not do this work when the packer chooses to allocate it to the over-the-road driver by consigning a shipment directly to the customer. Accordingly, even viewed from the perspective visualized by the Board, the crux of the controversy is whether local shipment of a product which has an out-of-Chicago origin, now still partially performed by the packer's local driver, shall be contractually committed to him in full.

Furthermore, viewed realistically, this perspective itself distorts the picture. Before the relocation of their operations outside Chicago, the work of delivering the product to customers of Swift, Armour, and Wilson within the Chicago area was performed exclusively by the packers' own local drivers when equipment was available. The truck that rolled up to the customer's premises was driven by the packer's local driver. Thus, far from being work never done by him, the work of delivering the product to the customer's premises had always been performed by the packer's own driver. With the relocation of their operations, however, Swift, Armour and Wilson began to ship to their customers within the Chicago area via the over-the-road driver. Now the truck that rolled up to the customer's premises was often driven by the over-the-road driver. In every meaningful sense, therefore, the packer's local driver was losing his work to the over-the-road driver. This could not be more dramatically manifested than it was by the sharp reduction from 333 to 80 in the number of drivers employed by Swift, Armour and Wilson in the Chicago area during the 1958-1961 contract term (supra, pp. 2-3). These jobs did not simply evaporate. They were lost because the work was being performed by others. And, as the dissenters

observed, the majority's statement that before relocation the local drivers did not deliver out-of-Chicago shipments "is meaningless. They had not done so because there had been no occasion to do so" (J.A. 69).

The common sense of the situation is thus too plain to be mistaken. 253 drivers who used to work for Swift, Armour, and Wilson lost their jobs with these packers. The Union wants these 253 drivers back on the packers' payroll. To accomplish this the work that the 253 drivers formerly did has to be restored to them. The work is restored to them if over-the-road shipment terminates without local delivery; the latter work is then to be performed by the packer with its own drivers; and the 253 drivers have thus regained their jobs. This is what the first part of the New Addendum would achieve. And to act as if the local drivers were interlopers without a fair claim to this work is bluntly nonsense.

**3. The View That the New Addendum Is Invalid Because the Union's Effort to Regain the Work Came Too Late, and Direct Shipment to Customers From Out-of-Chicago Locations Has Become Too Well-Established.**

The Board majority seems to be saying that the first part of the New Addendum is invalid as a hot cargo agreement because the Union's efforts to regain the work came too late, and direct shipment to customers from out-of-Chicago locations has become too well-established (J.A. 51-52). There is not a word to explain how this view relevantly relates to any statutory standard for determining the validity of a provision under section 8(e). We are unaware that a valid provision is turned into an invalid provision by the passage of time and an administrative judgment of a union's diligence. We are unaware that a valid provision is turned into an invalid provision because its adoption would disturb the status quo which in the administrative judgment is too firmly entrenched to be agitated. And the lack of relevance is matched by the lack of factual basis even if germane. Thus:

(a) Lack of diligence is ascribed to the Union for the reason that, while relocation began in 1955, the Union did not propose the New Addendum in negotiations until 1961 (J.A. 51). But it is manifest that, while migration first started in 1955 (J.A. 157), it was executed in force during the 1958-

1961 contract term, for it was then that the precipitous drop from 333 to 80 in the packers' employment of local drivers took place in Chicago. The major movement thus occurred "after the 1958 contract close to the middle of the contract . . ." (J.A. 151).<sup>24</sup> The negotiation of a new agreement, following this sharp loss of employment during the immediately preceding contract term, was the first appropriate opportunity that the Union had to address itself to the recovery of the lost work. As the dissenters stated, "an appropriate time to stanch a continuing loss of unit work is when a new contract is to be negotiated. It is then that the problem can be viewed as a whole in a context of mutual give and take along with other provisions relating to conditions of employment" (J.A. 69-70). Nothing in the law imposed on the Union acceptance of the situation as a fait accompli. On the contrary, the Union's effort at that time to retrieve the work and jobs lost by the employees it represented was the quintessence of collective bargaining and concerted activity for mutual aid or protection.<sup>25</sup>

Moreover, even if it were possible to accept the Board's view that the Union was lax, it would be applicable only to Swift, Armour and Wilson. But the New Addendum was sought of all other packers as well. The other packers have not yet relocated their operations outside of Chicago. Their shipment of their product to customers within the Chicago area is still fully performed to the extent of available equipment by the local drivers in their employ. As to these packers, should they relocate outside of Chicago, the New Addendum would operate to prevent the loss of work and jobs by the

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<sup>24</sup> This is confirmed by the June 19, 1961, Progress Report of the Automation Committee, formed of representatives of Armour, United Packinghouse Workers, and Amalgamated Meat Cutters under their collective bargaining agreements of September 1, 1959, in which it is stated that: "In the early summer of 1959 Armour and Company announced the permanent closing of six production plants. Included were two large establishments—in Chicago and E. St. Louis—and four smaller plants in Columbus, Fargo, and Atlanta and Tifton. \*\*\* In these close-downs, Armour and Company was not unique in the packing industry. Each of the other three members of the industry's one time Big Four have closed down numbers of major packinghouses in recent years." (Supra, p. 3, n. 2, emphasis supplied).

<sup>25</sup> Teamsters Local 331 (Bulletin Co.), 139 NLRB No. 117, 51 LRRM 1490; Teamsters Local 107 (Safeway Stores), 134 NLRB 1320; International Brotherhood of Electrical Workers, Local 292 (Franklin Broadcasting Co.), 126 NLRB 1212.



drivers in their employ as had occurred at Swift, Armour and Wilson. Surely the Union cannot be both too late as to Swift, Armour and Wilson, and too early as to the other packers.

As a variation on a theme, and presumably referring to the period preceding the 1961 negotiations, the Board majority states that: "As far as the record shows, the Union interposed no objection to the decision of the major packers to initiate the relocation of their packing facilities . . . Nor did the Union raise any objection to the packers continuing to deliver their meat products originating out-of-state directly to consignees in the Chicago area by interstate carriers" (J.A. 52). These are remarkable statements. One can just as readily say that, "As far as the record shows," the Union did vehemently object. When the record does not show either way one guess is as good as another. And since this case was tried by attorneys who, as described by the examiner, "are all experienced labor counsel" (Tr. 184), it is fair to infer that the record is silent on the matter because all counsel regarded it as irrelevant.

Moreover, to say that the Union did not object to relocation makes sense — even if irrelevant sense — only on the assumption that it would have done any good to object. On the legal level, as stated by the dissenters, "in view of the unsettled state of the law at the time with respect to an employer's duty to bargain over his decision to relocate a facility for economic reasons, it would have taken remarkable clairvoyance for the Union between 1958 and 1961 to claim that the employers had violated Section 8(a)(5) in failing to discuss with it their relocation and altered delivery plans" (J.A. 70). On the practical level it would probably have been useless for this Union to have protested relocation. This Union represents truck drivers. The drivers are a minor part of a packing plant. The bulk of the personnel is made up of inside plant workers represented by other unions. Any effective protest against relocation would have to come from these other unions. And the record is simply silent as to whether these other unions did in fact object.

(b) To show that direct shipment to customers by over-the-road carriers was well established — also an irrelevancy — the Board majority makes a number of baseless statements:

(i) The Board majority states that "some of the packers have arrangements with Frozen Food and the other interstate carriers whereby the carriers are guaranteed so much tonnage a year" (J.A. 51). Frozen Food and the other carriers who were charging parties before the Board are all common carriers (J.A. 136). No contract is entered into by the packer with the common carrier because no contract is necessary (ibid.). Entry into a contract by the packer is confined to the contract carrier; the contract specifies a quantity of meat and meat products to be carried in an amount "normally transported in a much shorter period of time" than one year (ibid.). A packer's entry into a "guaranteed tonnage contract" is "exceptional" (J.A. 105); most traffic is carried by common carriers without contract (J.A. 137, 136). Accordingly, the Board's statement that the packers enter into a contract with Frozen Food and the other charging carriers is completely baseless, and the guaranteed tonnage contracts which are entered into pertain to contract carriers transporting a very minor part of the traffic.

(ii) The Board majority states that "Ninety percent of Armour's, all of Wilson's, and a substantial portion of Swift's deliveries into the Chicago area were being made by self-employed truckers working for Frozen Food and the other interstate carriers" (J.A. 51-52, emphasis supplied). There is no evidence which shows what part of the deliveries into the Chicago area were being made by "self-employed truckers working for Frozen Food and the other interstate carriers." All that the evidence does show is that some unspecified part of Swift's shipments are made by vehicles "other than those owned by Swift and Company" (J.A. 102); ninety percent of Armour's shipments are made "by outside carriers" and not with its "own equipment" (J.A. 135); and Wilson does not use any of its own equipment for shipments into Chicago (J.A. 132-133). But there is nothing to show — and this is the point that the Board majority stresses without evidence to support it — that the outside carriers which are used by Swift, Armour, and Wilson are confined to "self-employed truckers working for Frozen Food and the other interstate carriers."

(iii) The Board majority states that "The decision [of the packers to relocate] was impelled by major changes in the raising and supply of live

stock, the shift from rail to truck transportation, changes in marketing, and major population shifts" (J.A. 52, see also J.A. 42, n. 3). There is no evidence — we repeat, no evidence — to support this statement. It is taken virtually verbatim from page 53 of Armour's brief to the Board.<sup>26</sup> It is very helpful to a party, at least when he benefits from the practice, to be able to make statements in a brief unsupported by evidence adduced at a hearing and have them accepted as datum by the trier.

4. The View That Bargaining to Secure Work Is Not "Necessarily" Protected Activity.

The Board majority states that it does "not agree . . . that a union's efforts to secure by a contractual preemption work for the employees in the bargaining unit is necessarily protected primary activity" (J.A. 52, emphasis supplied). One leg of this not "necessarily" so argument is the assertion that local shipment of the product having an out-of-Chicago origin is work not previously performed by the employees covered by the agreement (J.A. 52). We have already dealt with that view (supra, pp. 32-36). The other leg of the argument is that "Even if this work was performed by employees of the packers, rather than employees of other interstate carriers, such employees need not necessarily have been included in the unit represented by the Union" (J.A. 52, emphasis supplied). We do not understand what this statement means. No possible alteration of their unit is involved in assigning exclusively to the employees covered by the agreement the work of local shipment of product having an out-of-Chicago origin. The bargaining unit remains precisely the same as it has always been. All that happens is that recovery of the lost work will restore jobs to the employees within the unit. The Board majority needs more than two not "necessarily" so's to deprive work of its classic standing as a mandatory bargaining subject.

Propelled by two legless arguments, the Board marches to its conclusion in the following terms (J.A. 52-53):

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<sup>26</sup> The only difference is that, whereas Armour used the words "changes in marketing and competition," the Board used the words "changes in marketing." The omission of the words "and competition" was probably an inadvertent copying error.

Under these circumstances we cannot agree with our dissenting colleagues that the assignment of this work to members of the Union's contractual unit "is a mandatory subject of collective bargaining." While an employer is required to bargain about the terms and conditions of employment of a unit of employees, and this requirement may extend to work sub-contracted outside of the unit, a different issue is presented when an employer relocates part of his business to another location and sub-contracts work from that location. [Emphasis in original.] The new location may well entail a new and different unit. Reorganization of the Employer's business may mean a loss of jobs to employees in the preexisting unit, but this loss may not be compensated by infringement upon the rights of other employees in other units of the same or different employers. We do not purport to decide whether the interest of the packers "outweighs" the interest of the Union in this case. It is sufficient that the work sought by the Union in the first part of the New Addendum was not necessarily work within the scope of the existing Chicago unit. (Emphasis supplied.)

To add a third not "necessarily" so does not increase the strength of the argument. As usual, the factual premise of the argument is baseless. To conjure a conflict-of-unit interests, the Board asserts the existence of "other employees in other units . . . ." But there are no other employees. The Board elsewhere in its opinion describes the over-the-road drivers shipping directly to customers within Chicago from out-of-Chicago points as "self-employed truckers" (J.A. 52, 58-59, emphasis supplied), and it cannot transform self-employed truckers to employees just to suit the convenience of its argument. It was stipulated that "Frozen Food, Belford, Refrigerated Transport, Watkins and Zero are . . . employers of employees other than truck drivers . . ." (J.A. 143, emphasis supplied). Based on this stipulation, the persons driving for these carriers cannot be their employees. These persons must therefore be either employers or self-employed persons. The only evidence of their status is the form contracts which they enter into with the carriers, and on their face these contracts contemplate employer status on the part of these persons (J.A. 25; 179-184, 188-193, G.C. exs. 21, 25). There is no evidence of the actual fact. But whether employers or self-employed, these persons are clearly not employees, so that the Board has no factual predicate for its argument that the New Addendum would impair "rights of other employees in other units . . . ."

Assuming the fact the Board majority is clearly wrong in law. For it would make no difference even if they were employees. Whenever an employer uses the employees of another, rather than his own employees, to do work for him, the controversy can be cast in the Board's terms as "a loss of jobs to employees in the pre-existing unit" and a gain of jobs by "other employees in other units . . . ." That loss and gain have identical impact on the affected employees whether the losing and gaining employees are both located in Chicago or the losing employees are located in Chicago and the gaining employees in Omaha. The lack of any economic difference underscores the lack of any statutory difference. It is impossible to say that the losing employees are free to bargain for retention of the work if they are losing it to other employees in the same city but not free to bargain for the identical work if they are losing it to other employees in another city. The only circumstance relevant to their right to bargain for any work is that it be work to be performed by them. The Board's stress of the employer's movement of part of his business to another location is beside the point.

The Board mistakes the heart of the problem. The fact is that "competition for jobs" (United States v. Hutcheson, 312 U.S. 219, 233) is a permanent part of the American industrial scene. Disputes over who shall do the work "are almost wholly a question of the control of jobs. But non-revolutionary unions are chiefly concerned with jobs and the terms on which they shall be filled . . . . The job is the source of one's livelihood. When it is encroached upon, especially by another group accepting work at a lower rate of pay, a strong reaction occurs."<sup>27</sup>

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<sup>27</sup> Millis and Montgomery, *Organized Labor*, vol. III, pp. 275-276 (1st ed. 1945). See also, Lester, *Labor and Industrial Relations*, 135 (1951): "Changes in machinery, materials, and methods of production in a dynamic economy raise questions concerning who should perform work on the new equipment, process, or product. Thus one finds Carpenters and Plasterers both demanding the right to nail up plasterboard, the Carpenters and the Sheet Metal Workers each claiming exclusive right to put metal trim and metal doors and windows in buildings, and the Electrical Workers and Telephone Workers both insisting on the right to install telephone conduits in buildings . . . . The Seamen and the Longshoremen have disagreed as to where the work of one occupation leaves off and the other begins. The men's and ladies' garment unions have clashed regarding jurisdiction over mannish types of women's clothes (such as slacks) and over bathrobes and raincoats."



Short of regulation of jurisdictional disputes via section 8(b)(4)(D) in conjunction with section 10(k), which in this case there is and can be no claim has been violated (supra, pp. 21-22, and ns. 14, 15), Congress has left to free and private collective bargaining the solution of the problem of competition for jobs. The solution proposed by the Union in this case — division of the work between over-the-road shipment and local cartage — is indigenous to motor transportation. The Central States Over-The-Road Motor Freight Agreement, covering fourteen states, provides that "operations shall be dock to dock" without local "pickup and delivery" (J.A. 17; 216, 217-218, 227-228). Other major freight agreements similarly allocate the work between over-the-road shipment and local cartage, either providing for an exclusive division between the two segments or adjusting the extent of any permitted overlap (Appendix C, infra, pp. C1-C15). The Union's proposed solution in this case is in harmony with this natural demarcation.

It is of course none of the Board's business either to approve or disapprove the fairness of this adjustment of competing interests — and it is accommodation of competing interests each possessing equal legal rights, not "infringement upon the rights of other employees" as the Board would have it, which is at issue. The wisdom or unwisdom of this proposal is not to be confounded with its legality or illegality. ". . . Congress intended that the parties should have wide latitude in their negotiations, unrestricted by any governmental power to regulate the substantive solution of their differences." N.L.R.B. v. Insurance Agents' International Union, 361 U.S. 477, 488. The "Board may not, either directly or indirectly, . . . sit in judgment upon the substantive terms of collective bargaining agreements . . . . Congress expressly provided that the Board should not pass upon the desirability of the substantive terms of labor agreements. Whether a contract should contain a [particular] clause . . . is an issue for determination across the bargaining table, not by the Board." N.L.R.B. v. American National Insurance Co., 343 U.S. 395, 404, 408-409. See also, Local 24, International Brotherhood of Teamsters v. Oliver, 358 U.S. 283, 295; Terminal Railroad Asso. v. Brotherhood of Railroad Trainmen, 318 U.S. 1, 6.

And so, as the dissenters stated, to hold that bargaining over this competition for jobs is not mandatory "is to say that a union may not seek to bargain with an employer either about the quantum of work, or the qualifications of its members to perform closely related work, whenever technological changes or mere changes in methods of distribution are to be affected . . . . Section 8(e) . . . was not intended to have so broad a reach" (J.A. 70-71). Indeed, it was not intended to enter this area at all. Section 8(e) invalidates only the hot cargo agreement — a compact calling for a secondary boycott. The measure of the untenability of the Board's conclusion is that the provision it invalidates in this case and the analysis by which it reaches this result have nothing to do with a hot cargo agreement or a secondary boycott.

**II. The Second Part of the New Addendum May Validly Require That, Where the Employer Has Insufficient Equipment to Utilize Its Own Employees, "It May Contract With Any Cartage Company Whose Truckdrivers Enjoy the Same or Greater Wages and Other Benefits as Provided in This Agreement for the Making of Such Deliveries."**

We come to the second part of the New Addendum. It pertains to the situation where the employer does not have sufficient equipment to make shipment with its own employees and is therefore required to contract the work to others. The second part of the New Addendum covers this situation in the following terms:

In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the Chicago city limits, it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

Until this case the Board had "not ruled upon the legality of contracts which limit subcontracting to employers maintaining working conditions equivalent to those in the bargaining unit but which do not require a union contract." Bakery Wagon Drivers Local 484 v. N.L.R.B., 321 F.2d 353, 357, n. 15 (C.A.D.C.). The reserved question was decided in this case. Member Gerald A. Brown dissenting (J.A. 71-76), the Board invalidated confinement

of subcontracting to persons who observe commensurate labor standards (J.A. 53-56). Later cases confirm the Board's commitment to this absolute ban.<sup>28</sup>

The import of the Board's holding is underscored by relating it to the first part of Article XII which the Board has not invalidated. That part provides that "Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the Company in their own equipment . . ." (*supra*, p. 2). According to the Board, this is the legal limit, and the Union and the packers cannot validly add that "In the event that the Employer does not have sufficient equipment . . . , it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries." The contract must therefore proscribe all or nothing at all. Yet the conditional leave is a lesser included part of the absolute prohibition and consistent in purpose with it. "The right to absolutely exclude all right to use, necessarily includes the authority to determine under what circumstances such use may be availed of, as the greater power contains the lesser." *Davis v. Massachusetts*, 167 U.S. 43, 48.

We now show that there is no statutory eccentricity requiring acceptance of the illogic of the Board's position that, while subcontracting may be altogether prohibited, it may not be conditionally permitted by limiting its allowance to persons maintaining commensurate labor standards.<sup>29</sup>

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<sup>28</sup> *Local 585, Painters Union (Falstaff Brewing Corp.)*, 144 NLRB No. 22, 54 LRRM 1001; *United Mine Workers (Arthur J. Galligan)*, 144 NLRB No. 29, 54 LRRM 1037.

<sup>29</sup> It is necessary to determine the validity of the second part of the New Addendum even if the Court were to agree with the Board that the first part is invalid. For, as the Board has not invalidated the first part of Article XII, the Union and the packers must know whether they may validly bargain to modify it by the addition of a clause allowing subcontracting to cartage companies maintaining commensurate labor standards. As the Board's order now stands, based on the findings, bargaining for this modification would be illegal.



A. Section 8(e) Does Not Prohibit a Requirement That, When Work Is to be Subcontracted, It Shall be Let Only to Persons Who Observe Commensurate Labor Standards.

The validity of an agreement confiding the performance of defined work to the employees covered by it establishes the validity of a requirement that, if insufficient equipment is available to the employer to use his own employees, he shall subcontract the work only to an employer whose employees "enjoy the same or greater wages and other benefits" as the contractor's employees. The requirement is essential to minimize the risk that the employer may subcontract the work, not because equipment is unavailable, but because it is cheaper to do the work through another whose costs are lower because his employment standards are lower. Hence, to preserve the integrity of the valid requirement that the work be done by the employer with his own employees when equipment is available, it is essential that the work be subcontracted to none but persons who maintain the same or better labor standards when equipment is not available. This protects the work and the contract standards for its performance.<sup>30</sup>

By such an agreement a union and an employer each settle for half a loaf. The Union gives up insistence upon retention of all the work; the employer guarantees that work will not be sent out to profit from inferior labor standards prevailing elsewhere. The union is freed from the fear of losing the work to others operating under substandard conditions; the employer obtains flexibility consistent with protecting the work and standards he has promised to abide. The compromise meshes the employer's interest in flexibility with the union's interest in maximizing the work and safeguarding the standards for which the union has contracted. To say that the compromise is illegal means that a union must bargain for maximum employment security or none at all. It would put management into a strait jacket by disabling a union from accommodating an employer's interest in flexibility without jeopardizing the union's interest in maintaining the integrity of the agreement.

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<sup>30</sup> See Subcontracting Clauses in Major Collective Bargaining Agreements, Bull. No. 1304, Bur. Lab. Stat., U. S. Dept. Lab. (1961).

The law does not pinion the union and the employer on the horns of so implacable a dilemma. The objective served by limiting the persons to whom work may be contracted to those maintaining commensurate labor standards has long been recognized as a valid goal of collective bargaining. Federal legislation aims at "eliminating the competition of employers and employees based on labor conditions regarded as substandard . . . ." Apex Hosiery Co. v. Leader, 310 U.S. 469, 504, n. 24; and see id. at 503-504, 507, n. 25. The policy of the National Labor Relations Act explicitly avows that an evil against which the statute is directed is "preventing the stabilization of competitive wage rates and working conditions within and between industries" (sec. 1, para. 2). Collective bargaining under the Act contemplates that a legitimate objective for both employers and unions alike is "avoiding the competitive disadvantages resulting from nonuniform contractual terms." N.L.R.B. v. Truck Drivers Local Union No. 449, 353 U.S. 87, 96. "A Union may legitimately be concerned that a particular employer is undermining area standards of employment by maintaining lower standards." Local No. 41, International Hod Carriers Union (Calumet Contractors Assn.), 133 NLRB 512; see also Deaton Truck Line, Inc. v. Local Union 612, Teamsters, 314 F.2d 418, 422 (C.A. 5); Radio Broadcast Technicians, Local Union No. 1264, 123 NLRB 507, 527-529; Houston Building & Const. Trades Council (Claude Everett Const. Co.), 136 NLRB 321; Local Union No. 741, Plumbers, 137 NLRB 1125.

Giving concrete effect to this general idea, the Supreme Court has upheld the validity of an agreement indistinguishable in principle from the subcontracting control embraced by the contested provision in this case. Local 24, Teamsters Union v. Oliver, 358 U.S. 283. In Oliver, as a result of multi-employer and multistate collective bargaining, an agreement was reached between a Drivers Council and motor carriers. Article XXXII of the agreement prescribed terms and conditions which regulated the minimum rental and other terms of lease when a motor vehicle is leased to a carrier by an owner who drives a vehicle in the carrier's service. The Union defended the Article "as necessary to prevent undermining the negotiated drivers' wage scale said to result from a practice of carriers of leasing a vehicle from an owner-driver at a rental less than his actual costs of operation, so that the

driver's wage received by him, although nominally the negotiated wage, was actually a wage reduced by the excess of his operating expenses over the rental he received." Id. at 289. The Supreme Court sustained the validity of the agreement, observing that the Article was the product and within the scope of mandatory collective bargaining under the National Labor Relations Act because its objective was (1) to maintain the "basic wage structure established by the collective bargaining agreement" from undermining by owner-operators who would drive for less than what it cost the carrier to pay its own employees, and (2) to prevent "progressive curtailment of jobs through withdrawal of more and more carrier-owned vehicles from service." Id. at 293-294. The principle validating protection of the work and standards of the employees covered by the agreement by erecting safeguards against undercutting is the same in this case as in Oliver. See also, United States v. Drum, 368 U.S. 370, 382, n. 26; Deaton Truck Line, Inc. v. Local Union 612, Teamsters, 314 F.2d 418, 422 (C.A. 5); cf., United States Pipe and Foundry Co. v. N.L.R.B., 298 F.2d 874 (C.A. 5).

In limiting the class of persons to whom the work may be subcontracted to those who maintain commensurate employment standards, it is necessary carefully to observe a sharp and basic distinction. Exclusion of others is grounded on the direct detriment to the employees covered by the agreement flowing from having their work done under substandard conditions. It is the adverse effect on them which is at the root of their concern. It is a direct benefit to their employment situation which they seek. Their purpose is not to limit their employer in the persons with whom he does business in order to further a dispute at another employer's establishment, or to protest objectionable conditions at another employer's establishment, or to improve the lot of the employees of another employer. They are activated by a primary concern with their own working welfare, not by a secondary concern with the unrelated working welfare of others. Their employer is not in the position of a neutral employer; their employer is the primary disputant from whom they seek an agreement safeguarding their own work and standards by removing an economic incentive in conflict with maintenance of both.

To be sure, the consequence of an agreement limiting the persons to whom work may be subcontracted to those who maintain commensurate

standards may be to require the employer to refrain from or cease doing business with others. But the same consequences inheres in an agreement confiding the performance of defined work exclusively to the employees covered by the agreement. The two agreements are adjuncts of each other; the consequence is the same in both; and the same consequence cannot be fatal to the former agreement when it is not to the latter agreement. "As long as the union can show that the subcontracting provision will directly benefit employees covered thereby, its other motives, as well as the incidental effects of such an arrangement on outsiders, should not be made the basis for declaring the agreement illegal." Aaron, The Labor-Management Reporting and Disclosure Act of 1959, 73 Harv. L. Rev. 1086, 1119 (1960).

The nub of the problem was laid bare by this Court in Retail Clerks Union Local 770 v. N.L.R.B., 111 U.S. App. D.C. 246, 296 F.2d 368, 373-374. The Court first held that an agreement may validly preserve to bargaining unit employees the work of the unit and prohibit the subcontracting of it. Id. at 373. It then remanded to the Board consideration of an exception by which work could be subcontracted to another employer who has an agreement with the union. Id. at 374. The Court cautioned the Board that in explicating its conclusions and reasons (id. at 373-374):

It cannot do so by blanket pronouncements in respect to subcontracting clauses. These clauses take many forms. Some prohibit subcontracting under any circumstances; some prohibit it unless there is sufficient work in the shop to keep shop employees busy; some prohibit it except where the subcontractor maintains a wage scale and working conditions commensurate with those of the employer who is party to the collective agreement. On the face of it, these provisions would seem to be legitimate attempts by the union to protect and preserve the work and standards it has bargained for. In the latter supposition, for example, the union may be attempting to remove the economic incentive for contracting out, and thus to preserve the work for the contracting employees. (Emphasis supplied.)

To this analysis the Board responds with the ipse dixit that the "main thrust of the clause is regulation and establishment of approved conditions for employees of another employer rather than with the definition and preservation, for the exclusive performance of employees in the bargaining unit, of work that traditionally has been performed in that unit" (J.A. 54). But the clause simply does not regulate or establish approved conditions for

employees of others. The conditions elsewhere are determined either unilaterally by the other employer, or by the other employer and other union if a collective bargaining relationship exists, and the conditions there "may be as bad as the employees will tolerate or be made as good as they can bargain for."<sup>31</sup> The clause is concerned with substandard conditions elsewhere, not in order to improve them, but to be sure that they do not operate to erode the approved conditions within the unit which the contracting union has every right to regulate and establish through collective bargaining. The clause's confinement of subcontracting to employers who maintain commensurate labor standards is designed to serve the unit's self-interest in protecting its own work and standards. A unit for which a union bargains is not an isolated entity for which contract terms can be negotiated in disregard of the industry and economy in which the unit exists. This means at the minimum that the unit is entitled to protect its work and standards from undercutting by others outside the unit. It is this purpose which is served by limitation of subcontracting to employers who maintain the same or better labor standards. "The interdependence of economic interest of all engaged in the same industry has become a commonplace." A.F.L. v. Swing, 312 U.S. 321, 326. It is late in the day to suggest that the statute requires that collective bargaining must be conducted heedless of this commonplace.

The Board can place this clause within the "well settled . . . proscription of the secondary boycott" (J.A. 54) only by blindly assimilating its operation to a product boycott. In a product boycott employees refuse to handle or work on behalf of their employer on a product which is in the union's disfavor because of objectionable conditions deemed to prevail at the original place of the product's manufacture. Examples are the refusal of union carpenters to hang doors manufactured by a nonunion firm (Local 1976, United Brotherhood of Carpenters v. N.L.R.B., 357 U.S. 93, 94-96); the refusal of union carpenters to install a precut staircase made by a nonunion concern (N.L.R.B. v. Local 1016, United Brotherhood of Carpenters, 273 F.2d 686 (C.A. 2)); the refusal of sheet metal workers represented by one union to install ventilators because manufactured by employees represented by a

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<sup>31</sup> Terminal R. Asso. v. Brotherhood of Railroad Trainmen, 318 U.S. 1, 6.



different union (Sheet Metal Workers' International Association v. N.L.R.B., 110 U.S. App. D.C. 302, 293 F 2d 141, cert. denied, 368 U.S. 896).

The distinction between the product boycott and the clause in this case is obvious and decisive. It is not the job of the installing carpenters to manufacture doors or staircases; nor is it the job of the installing metal workers to fabricate ventilators. Their refusal to install the disfavored products is not related to preservation of their own work. The making of the door, the pre-cutting of the staircase, the fabrication of the ventilator is not work they would have done. The quantum of work available to them and their labor standards for doing it are undiminished because of the conditions prevailing at the place of manufacture. Their refusal to install the disfavored product is therefore the traditional secondary boycott designed to protest objectionable standards existing elsewhere unrelated to preservation of the protesting employees' immediate welfare at their own place of employment.

Not so with the clause in this case. The clause relates entirely to work that the agreement confides to the employees covered by it. It is work which, were it not contracted out by the employer, would be performed by his own employees. It is the employees' own work upon which a subcontracting limitation is placed. The clause authorizes that work to be subcontracted, but cabined by the requirement that the person to whom it is let maintain commensurate labor standards, the object being to prevent exploitation of contracting out as an undercutting device.

And so, as this Court has stated, a clause of the kind in this case "cannot be fitted into molds designed for cases involving refusals to handle goods." Retail Clerks Union Local 770 v. N.L.R.B., 111 U.S. App. D.C. 246, 296 F.2d 368, 372. The Board has itself explained, but unaccountably forgotten in this case, that the "product boycott cases . . . [are] inapposite, for they involved the refusal of employees to work on the nonunion products of other than their own employers, products which they would not themselves manufacture in the course of their employment. The threat of displacement in the normal course of their employment was remote and posed no violation of their contractual rights." Longshoremen's Local Union No. 19, 137 NLRB 119, 128, n. 4. By the clause in this case "the union is seeking to protect some economic interest of the employees . . . [of the employer with whom it is contracting], and

not just using its position . . . [with that employer] to enforce its demands against subcontractors." Bakery Wagon Drivers Local 484 v. N.L.R.B., 321 F.2d 353, 358 (C.A.D.C.).

B. The Board's Secondary View That Limitation of Subcontracting to Persons Maintaining Commensurate Labor Standards Was an Artifice to Conceal an Unlawful Purpose Is Baseless.

In addition to its primary view that section 8(e) bans a commensurate labor standards provision as a matter of law, the Board secondarily states that in this case the provision constituted an artifice to conceal an illegal purpose. According to the Board, "it was the employment opportunities of members of Local 710, rather than preservation of work for the employees in the bargaining unit that Local 710 sought to protect by imposing this restriction on subcontracting" (J.A. 55). Apparently the Board is saying that, although the provision explicitly confines the subcontracting limitation to persons maintaining commensurate labor standards, the Union's real purpose is to restrict the letting of work to those cartage companies under contract with it or employing its members. Three meritless reasons are assigned to support this surmise. We turn to these.

1. The Board states that "At the bargaining session with the packers held on April 21, Secretary-Treasurer of Local 710, O'Brien, stated that Local 710 'specifically had to have some language in the contract which protected the Union in terms of deliveries and pickups in the Chicago area' " (J.A. 55; 110, emphasis in original). Evidently the Board deduces from the words "protected the Union" the conclusion that the Union was indifferent to safeguarding the work and standards of the packers' employees whom it represented, but was concerned instead with obtaining employment for the workers employed by the cartage companies whom it also represented.

It is impossible to know how the words "protected the Union" can remotely support a conclusion that the Union in reality sought to foster the interests of one segment rather than another of its total constituency. Furthermore, the remark quoted by the Board referred, not to subcontracting of overflow work to cartage companies when the packer had insufficient equipment, but to the fact that "the Union had a real problem in Chicago, that the

larger packers had moved out of the area, that the product was being shipped into the Chicago area from out of state," and in that connection "that they specifically had to have some language in the contract which protected the Union in terms of deliveries and pickups in the Chicago area . . ." (J.A. 110). Thus, in the very testimony upon which the Board relies, confirmed by every word of the total record, O'Brien was explicit in identifying the "real problem" as the loss of jobs by the packer's local drivers as a result of over-the-road shipment into the Chicago area directly to the customer. How this can be twisted into indifference on the Union's part to safeguarding the work and standards of the packer's local drivers defies understanding.

2. The Board's second reason is that "the subcontracting clause of the First Addendum which limited subcontracting to companies under contract with Local 710, had been withdrawn and replaced by the revised subcontracting clause of the New Addendum on June 5, but only after the unfair labor practice charges had been filed by the packers and in response to the pressure of the injunction proceeding" (J.A. 55, emphasis in original). This reason does not withstand scrutiny. With the proposal of the New Addendum the First Addendum was irrevocably renounced (infra, p. 56). While the First Addendum limited the packer in his choice of a cartage company to one which had an agreement with the Union, the New Addendum authorizes the packer to contract with "any cartage company" that maintains the same or better labor standards as enjoyed by the packer's drivers (supra, pp. 7, 9-10). Thus, unlike the first, where the essential prerequisite to eligibility was an agreement with the Union, under the new no agreement with the Union is required, the sole condition upon eligibility being observance of commensurate standards. And so, according to the Board, despite the fact that the new is graphically different, it should be deemed the same as the old. But the new cannot be assimilated to the old just because the old came first. White is not black because black preceded it. Whatever the reason for the change, it was made, and that is what counts.

3. The Board's final reason for asserting that, notwithstanding the graphic change, the Union was "still pursuing the same objective," is that "on June 6, or the next day, Local 710 agreed with the packers, except Swift & Co., to enter into the Packing House Agreement containing Article XII(1),



carried over from the previous agreement, which limited subcontracting to cartage companies employing members of Local 710" (J.A. 55, emphasis in original). But the history of this carry-over shows that it is utterly without significance. At the outset of negotiations in 1961, among numerous other provisions, the Union proposed an Article XXXIII, identical with Article XII(1) except for an insubstantial change (J.A. 160). Whereas Article XII(1) provides that "when there is a lack of equipment at individual plants or branches . . . then all effort will be made to contract a cartage company who employs members of Local No. 710," Article XXXIII as proposed would change the latter clause to read that "then a cartage company who employs members of Local No. 710 will be used." Neither Article XXXIII, as proposed, nor Article XII, as it existed, was an issue in negotiations. Article XXXIII was not discussed in negotiations (Tr. 129, J.A. 87). Nor did the packer group seek to eliminate Article XII from the agreement; "the matter was silent. It wasn't discussed one way or another"; none of the "counter demands" of the packer group "involved this particular paragraph" (J.A. 129-130). Thus, the continuation of Article XII was not an issue in the 1961 negotiations; it did not contribute to and was not an object of the strike. Its carry-over into the 1961 agreements in the unchanged form in which it had existed for twenty years past manifests the contracting parties' supreme indifference to it; it does not evince an intent upon the Union's part to pursue an illegal object.

The Union acquiesces in the Board's determination that subcontracting cannot be limited to cartage companies which have an agreement with it, as in the First Addendum, or to cartage companies which employ members of the Union, as in Article XII(1). But the Union contests the Board's determination that subcontracting cannot be limited to cartage companies which maintain commensurate labor standards. This straightforward provision on which the Union has chosen to stand permits no equivocation as to its purpose. There is no extrinsic evidence which would justify mutilation of its plain terms. On the contrary, the whole of the evidence shows that the Union's sole aim was to restore and preserve local jobs with the employing packers, accompanied by the ancillary servient purpose essential to the first of limiting subcontracting to cartage companies maintaining commensurate labor

standards. The New Addendum accomplishes that purpose in full without any need to insinuate unexpressed and invalid standards into it. As the Supreme Court has said, "We cannot assume that a union conducts its operations in violation of law or that the parties to this contract did not intend to adhere to its express language." Local 357, Teamsters v. N.L.R.B., 365 U.S. 667, 676. "'In the absence of provisions calling explicitly for illegal conduct, the contract cannot be held illegal because it failed affirmatively to disclaim all illegal objectives.'" N.L.R.B. v. News Syndicate Co., 365 U.S. 695, 699-700. If an agreement "may have a double intendment, and the one standeth with law and right, and the other is wrongful and against the law, the intendment that standeth with law shall be taken." Coke Lit. 42a, in 3 Williston, Contracts, § 620, p. 1785, n. 2 (rev. ed.); see also, Manning v. Ellicot, 9 U.S. App. D.C. 71.

Finally, the Board's finding that the Union is pursuing an illegal objective unexpressed in the clause cannot support the Board's conclusion that the clause is invalid on its face. And, since the clause is not invalid on its face, the finding cannot support the Board's order prohibiting entry into the clause. Where a clause is legal on its face, yet can lend itself to illegal application, the appropriate course is not to illegalize the clause, but rather to defer adjudication of any claim of illegal application to the time when it may have "actually occurred in a particular case. . . ." N.L.R.B. v. Amalgamated Lithographers, 309 F.2d 31, 41 (C.A. 9). When and if invalid application does eventuate in the future, the consequence even at that time is not invalidation of the clause valid on its face, but simply issuance of a prohibition against putting a legal clause to an illegal use. Bakery Wagon Drivers Local 484 v. N.L.R.B., 321 F.2d 353, 358 (C.A.D.C.). That is the limit of the consequence when a valid clause is actually invalidly applied, and surely the consequence can be no more extreme when, no invalid application having in fact occurred, it is simply speculatively anticipated that it may take place. The situation is identical with the settled rule pertaining to a contest over the validity of a statute; a statute having a valid scope for operation in its face is not subject to attack because of anticipated invalidity in its application. Smith v. Cahoon, 283 U.S. 553, 562. That the Union had proposed an invalid clause which it has irrevocably renounced, or carried over an ancient clause to which all parties

were indifferent and in the invalidity of which the Union now acquiesces, can make no difference to the validity on its face and the right of the Union to bargain for the protection of a clause limiting subcontracting to cartage companies maintaining commensurate labor standards. Otherwise a person would be forever barred from the enjoyment of a legal course of action, available to all others, simply because his first steps were temporarily misdirected. ". . . [T] hough the union may have misconducted itself, it has a locus poenitentiae . . . ." N.L.R.B. v. Remington Rand, Inc., 94 F.2d 862, 873 (C.A. 2), cert. denied, 304 U.S. 576. If the clause is valid on its face, the Board has no power to deprive the employees whom the Union represents of its benefits.

### III. The Issue of the Validity of the First Addendum Is Moot and its Adjudication Pointless.

Between June 1 and June 5, 1961, the Union signed individual agreements with seventeen employers settling the strike between them (supra, p. 8). Included in these agreements was a so-called First Addendum which provided that over-the-road shipments "will be done by a certificated carrier who is a party to the Central States or other Over-The-Road Teamster Motor Freight Agreement," and that local overflow cartage will be transported by companies under contract with the Union (supra, p. 8). The Board explicitly found that "all the contracts entered into between June 1 and 5 were canceled by the parties on June 6" (J.A. 57). It nevertheless held that "the violation of the Act has not been thereby rendered moot," and concluded that the First Addendum "violated Section 8(e) of the Act" (J.A. 57).

The issue of the validity of the First Addendum is moot and its adjudication pointless. The First Addendum had a maximum life of five days. It ceased to exist on June 6, 1961. It was by mutual agreement irrevocably terminated on that day. It had in fact been withdrawn by the Union on June 5, 1961, and was after its withdrawal "no longer in the picture" (supra, p. 9). It was nothing but an intermediate step in an uncompleted process of negotiation. It has no prospect of revival. It is wholly devoid of any present legal or practical effect, and has had none since June 6, 1961. Its interest is antiquarian.

Adjudication of the validity of First Addendum is therefore a purposeless academic exercise. Cancellation of a contested provision before entry of an order requiring that action, at least in a situation showing enduring renunciation of it, moots the question of its validity. Standard Oil Co. v. United States, 283 U.S. 163, 181-182. But lack of technical mootness would not itself justify adjudication. "The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive." United States v. W. T. Grant Co., 345 U.S. 629, 633. Put in the circumstances of this case, there must be a reasonable basis for apprehension that the terms of the First Addendum will be renewed in the future. The Board has not made, and on this record there would be no evidentiary support for, this requisite finding.

In considering this question this Court has a responsibility to its own judicial processes. It is this Court's enforcing decree which the Board seeks. If the controversy is moot, this Court has no power to adjudicate it.<sup>32</sup> But if power exists, so does the question of its exercise. "The jurisdiction to review the orders of the Labor Relations Board is vested in a court with equity powers . . . ." Ford Motor Co. v. N.L.R.B., 305 U.S. 364, 373. "Equity will not do a useless or vain thing, and in the absence of some likelihood or probability that the violations will recur, the court is fully justified in refraining from entering an empty decree." Mitchell v. Chambers Const. Co., 214 F.2d 515, 517 (C.A. 10). "Idle, pointless court decrees are not helpful to enforcement of the law . . ."; "entry of decrees unrelated to present reality is not countenanced by our jurisprudence." N.L.R.B. v. Eanet, 85 U.S. App. D.C. 371, 179 F.2d 15, 21. To refrain from litigating the validity of the First Addendum is the lesson of this teaching. See also, N.L.R.B. v. Kingston Cake Co., 206 F.2d 604, 611 (C.A. 3); N.L.R.B. v. Central Mercedita, 273 F.2d 370, 372 (C.A. 1).

#### IV. There Is No Evidence to Support the Board's Finding That an Object of the Strike Was to Require Self-Employed Truckers to Join the Union.

Section 8(b)(4)(A) of the Act provides in part that it shall be an unfair labor practice for a union to strike where an object is "forcing or requiring

<sup>32</sup> United States v. Hamburg-Amerikanische Packet-Fahrt-Actien Gesellschaft, 239 U.S. 466, 475-477; St. Pierre v. United States, 319 U.S. 41.

any . . . self-employed person to join any labor . . . organization . . . ." As stated, the First Addendum provided that over-the-road shipments" will be done by a certificated carrier who is a party to the Central States or other Over-The-Road Teamster Motor Freight Agreement." According to the Board, were this provision effectuated, "the self-employed truckers would have to become members of the Union, if they wished to work for the interstate carriers" (J.A. 58). Based on this view, the Board concludes that "the strike from June 1 until the First Addendum was withdrawn on June 5, was also for an object of forcing or requiring self-employed truckers to join the Union in violation of Section 8(b)(4)(i)(ii)(A) of the Act" (J.A. 59).

As with the use of the First Addendum to support a violation of section 8(e), so with its use to show a violation of section 8(b)(4)(A), the issue is moot and its adjudication pointless. On the merits of the issue, the Board is clearly wrong.

First, there is no evidence that the persons engaged by the carriers are self-employed. The only evidence of their status is the form contracts which they enter into with the carriers, and on their face these contracts contemplate employer status on the part of these persons (J.A. 25; 179-184, 188-193, G.C. exs. 21, 25). There is no evidence as to the actual fact. There is therefore no evidentiary basis for the Board's essential finding that an object of the strike was to require "self-employed truckers to join the Union . . . ."

Second, assuming self-employed status, the First Addendum required that the carrier be a party to a Teamster over-the-road agreement. To be a party to a collective bargaining agreement does not express or imply that the agreement requires union membership on the part of self-employed persons. The only over-the-road agreement in evidence is the Central States, and that agreement requires union membership solely of "employees" (J.A. 217).

Third, and conclusively, nothing in this record shows that the Union had the least interest in unionizing self-employed persons, or sought in any way to accomplish that purpose. Whether or not the self-employed person was a member of the Union, he would not be eligible to perform local shipment of the product for the packer to customers in the Chicago area, since that work was to be confided exclusively to the packer's own drivers to the extent of available equipment. In short, the objection to the self-employed person, if such he be, was not to his self-employed status or to his union or nonunion status, but to his engagement in the work of local shipment to the packer's customers in the Chicago area, and that objection would subsist whether he was or was not a member of the Union. Union membership was an irrelevant and neutral factor.



There is thus simply a total lack of any evidentiary support for a finding that membership in the Union by self-employed persons was "an object" of the Union's activity.

## V. The Board's Order Is Too Broad.

### A. The invalidation of Article XII(1) in toto.

The first part of Article XII(1) provides that (J.A. 210-211):

Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered in their own equipment, except when there is a lack of equipment at individual plants or branches . . . .

The second part of Article XII(1) provides that:

. . . . and then all effort will be made to contract a cartage company who employs members of Local No. 710. Employer agrees to do all possible to use his own equipment at all times.

The Board found violative of section 8(e) only that part of Article XII(1) providing "and then all effort will be made to contract a cartage company who employs members of Local No. 710" (J.A. 48-49). Its order nevertheless requires desistance from "Maintaining, enforcing, or giving effect to" the whole of Article XII(1) (J.A. 62).

Voiding the whole, because of the invalidity of a severable part of it, conflicts with settled law. Excision of the objectionable phrase "and then all effort will be made to contract a cartage company who employs members of Local No. 710" leaves the remainder of the clause intact as a viable promise capable of enforcement in keeping with the sense of the contractors. This being so, the Board is without power to invalidate all "where the excess may be severed and separately condemned as it can here." N.L.R.B. v. Rockaway News Supply Co., 345 U.S. 71, 79. See also, Manning v. Ellicot, 9 U.S. App. D.C. 71, 81; Local Lodge No. 1417, Machinists v. N.L.R.B., 111 U.S. App. D.C. 235, 296 F.2d 357, 358-359; United States v. Bradley, 10 Pet. 343, 360; WERB v. J. & H. Foods, 45 LRRM 2738, 2746 (Wis. Cir. Ct., Jan. 7, 1960); Restatement, Contracts, § 607, Comment a.

The only sound objection to limiting invalidation to the illegal part would be if the remaining legal part would no longer reflect the essential sense of the promise that the parties have made to each other so that its enforcement would foist on the parties a contract they did not undertake. But this is emphatically not the case here. The packers have certainly promised that truck delivery of meat within 50 miles of the Chicago Stock Yards "shall be delivered in their own equipment, except when there is a lack of equipment at individual plants or branches . . . ." To hold the packer to this legal promise

holds it precisely to its word. The packer had also promised that, in case of lack of equipment, it would make "all effort . . . to contract a cartage company who employs members of Local No. 710." Excision of this part leaves the packer with greater latitude than it had, so that deletion of the invalid part, rather than destruction of the whole promise, must be completely unobjectionable to it. And, from the viewpoint of the Union as the other contracting party, it obviously suits its interests better to leave the promise it had secured as nearly intact as possible.

B. Extension of the Order to "Any Other Employer"  
and to "Any Other Labor Organization."

It is stipulated that the reference to "other employers" in parts 1(a) and (b) of the order "means other employers in the Chicago meat packing industry" (J.A. 2). Nevertheless, parts 1(c), (d) and (e) of the order extend their prohibition to "any other employers" without limitation (J.A. 62-63). This extension is unjustifiable. The Union bargains with employers other than meat packers (J.A. 110). The controversy in this case pertains entirely to meat packers. There is no warrant for extending the order beyond this class to embrace "any" employers.<sup>33</sup>

The same infirmity attaches to part 1(e) of the order prohibiting a strike and cognate pressure to require self-employed truckers "to join Respondent Union or any other labor organization" (J.A. 63, emphasis supplied). The finding is limited to a strike to require self-employed truckers "to join the Union . . ." (J.A. 59). There is no justification for extending the order beyond the finding and to have it reach "any" union.

### CONCLUSION

For the reasons stated, the Board's order should be set aside and the case remanded to the Board with instructions to formulate an order limited to excising the invalid part of Article XII(1).

Respectfully submitted,

LESTER ASHER  
MELVIN R. ROSENBLOOM  
130 North Wells Street  
Chicago 6, Illinois

BERNARD DUNAU  
912 Dupont Circle Building  
Washington, D. C. 20036

*Attorneys for Petitioner*

December, 1963.

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<sup>33</sup> Communications Workers v. N.L.R.B., 362 U.S. 479; Steelworkers v. N.L.R.B., 111 U.S. App. D.C. 60, 294 F.2d 256, 260; Carpenters v. N.L.R.B., 109 U.S. App. D.C. 249, 286 F.2d 533, 539.



APPENDIX A

RELEVANT STATUTORY PROVISIONS

As amended in 1959, section 8(b)(4)(i) and (ii)(A) and (B) of the Act provides in part that it shall be an unfair labor practice for a union or its agents:

(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e);

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, . . . Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or picketing. . . .

As enacted in 1959, section 8(e) of the Act provides in part that:

It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforcible and void. . . .



APPENDIX BIN EXTENSO STATEMENT OF THE LEGISLATIVE  
HISTORY OF SECTION 8(e) SUMMARIZED  
IN PART I, C, 2 OF THE BRIEF

For convenience, we set forth in this appendix an in extenso statement of the legislative history of section 8(e) as it was summarized in part I,C,2 of the brief.

The bill reported by the Senate Labor Committee did not contain any provision dealing with the subject of hot cargo agreements. The minority on the Committee criticized this omission, explaining that (S. Min. Rep. No. 187, 86th Cong., 1st Sess., 79-80, in 1 Leg. Hist. LMRDA 475-476; see also, 105 Cong. Rec. 5920):

It has become common to find clauses in union contracts whereby the employer agrees not to handle what the union chooses to call "hot goods," "unfair materials," and "black-listed products." Such clauses have become standard in contracts entered into by the Teamsters Union. Here, employer A, who has a dispute with a union or whose employees are being solicited for union membership, is in real trouble. He may have customers waiting for his product or he may have suppliers eager to send him raw material, but both his delivery of products and supply of raw material cannot move from or to his place of business because the carriers in either instance have "hot cargo" clauses in their contracts with the Teamsters Union. His alternative is the same as in loophole No. 1 - go out of business or yield to the union's demand, which often is a demand for a compulsory membership contract with a union which his employees do not want.

These "hot cargo" contracts have been the subject of much litigation before the Board, the courts, and the Interstate Commerce Commission. A review of these cases leads to the conclusion that while there may be circumstances under which a "hot cargo" contract is not a defense to otherwise unlawful conduct, generally speaking it does provide a large loophole in the ban on secondary boycotts.

S.748 makes it an unfair labor practice for a union to coerce an employer to enter into such an agreement, or having entered into it, for a union to coerce the employer to live up to it, or to induce his employees to take economic action to force the employer to live up to it. Only the latter is now unlawful under the Taft-Hartley Act.

On the Senate floor an amendment was thereafter adopted limited to invalidating hot cargo agreements with motor carriers (105 Cong. Rec. 6556-58, in 2 Leg. Hist. LMRDA 1161-63):

It shall be an unfair labor practice for any labor organization and any employer who is a common carrier subject to Part II of the Interstate Commerce Act to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, or transporting any of the products of any other employer, or to cease doing business with same.\*

Extension of the invalidation to employers other than motor carriers was expressly rejected (ibid.).

In the House, the House Labor Committee reported a bill which also limited the invalidation of hot cargo agreements to those entered into with motor carriers. The House bill made it an unfair labor practice for an employer (H. Rep. No. 741, 86th Cong., 1st Sess., 58, in 1 Leg. Hist. LMRDA 816):

who is a common carrier subject to part II of the Interstate Commerce Act, to enter into any contract or agreement, express or implied, with a labor organization whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, or transporting any of the products of any other employer, or to cease doing business with same.

And it similarly made it an unfair labor practice for a union (id. at 60, in 1 Leg. Hist. LMRDA 818):

to enter into any contract or agreement, express or implied, with any employer who is a common carrier subject to part II of the Interstate Commerce Act, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, or transporting any of the products of any other employer, or to cease doing business with same.

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\* The Senate also adopted an amendment making it a violation of the duty to bargain to inject such a clause into negotiations with motor carriers, and voiding and rendering unenforceable any such clause with a motor carrier either presently existing or to be executed in the future. 105 Cong. Rec. 6730, in 2 Leg. Hist. LMRDA 1242-43.

The House Report stated in explanation of these provisions that (id. at 20-21, in 1 Leg. Hist. LMRDA 778-779; see also, id. at 51, 80, in 1 Leg. Hist. LMRDA 809, 838):

The committee bill would amend the National Labor Relations Act by outlawing "hot cargo" clauses in labor contracts signed by common carriers subject to part II of the Interstate Commerce Act - i.e., those common carriers who transport goods in interstate commerce. The "hot cargo" clause is one of the oppressive devices used by the Teamsters Union to spread its power. Outlawing this clause in the trucking industry would close a loophole in the present law against secondary boycotts.

The need for additional legislation outlawing the "hot cargo" clause results from a gap in the National Labor Relations Act. Section 8(b)(4)(A) makes it an unfair labor practice for a labor union -

to induce or encourage the employees of any employer to engage in a strike or a concerted refusal \* \* \* to perform any services, where an object thereof is \* \* \* forcing or requiring any employer \* \* \* to cease doing business with any other person \* \* \*.

The application of this prohibition is best illustrated by a concrete example. Suppose that company A trucks furniture over the road from terminals in Atlanta, Ga., to Philadelphia and New York and that company B manufactures furniture in Macon, Ga., which is taken to Atlanta and then carried north in A's trucks. If there were a strike at B's factory in Macon, it would be an unfair labor practice under the present law for the union which called the strike to go to Atlanta and induce A's truckdrivers to refuse to handle B's furniture on the ground that it was "hot cargo."

But two essential elements of the present law are the inducement of employees by a labor union and a strike or concerted refusal to perform services. In the example, if the trucking company, A, simply refused to carry B's furniture there would be no unfair labor practice because there was no inducement of employees by the union.

After the Taft-Hartley Act became law the Teamsters Union began to exploit this distinction by the device of "hot cargo" clauses. During negotiations the Teamsters would demand that the trucking firm, A, put a clause into the collective bargaining agreement agreeing generally that A would not truck nor require his employees to handle any freight which was "hot" or "unfair" because it came from

an employer engaged in a labor dispute. It would be hard for A to resist this demand. Later the Teamsters could insist that A live up to the contract and refuse to handle freight such as B's furniture.

From B's standpoint it makes no difference whether his furniture cannot be trucked out of Atlanta because the Teamsters induce A's employees to refuse to handle it or because A has been compelled to sign a contract not to handle hot goods. The injury to the public is also the same. The "hot cargo" clause therefore became a major weakness in the law against secondary boycotts.

Section 707 of the Senate bill sought to correct this weakness by outlawing "hot cargo" clauses. It proposed to amend the National Labor Relations Act by making it an unfair labor practice for a common carrier subject to part II of the Interstate Commerce Act to enter into such a contract with a labor union and by making it an unlawful refusal to bargain for the labor organization to press for such a clause in contract negotiations. The Senate bill would also make existing hot cargo clauses unenforcible. Since section 707 followed the words of NLRA section 8(b)(4)(A) insofar as they could apply to carriers it preserved the established distinction between primary activities and secondary boycotts. [Emphasis supplied.]

The minority of the House Labor Committee criticized this limited invalidation of the hot cargo agreement. *Id.* at 97, in 1 Leg. Hist. LMRDA 855. On the House floor the House voted a general invalidation of hot cargo agreements. 105 Cong. Rec. 15710, 15859, 15891, in 2 Leg. Hist. LMRDA 1645, 1691, 1700-01. In conference the Senate managers yielded to the House managers and the prohibition in its present form emerged from conference and was finally enacted. H. Rep. No. 1147, 86th Cong., 1st Sess., 26, 27, 39, in 1 Leg. Hist. LMRDA 943; 105 Cong. Rec. 17899, 17919-20, 18153-54, in 2 Leg. Hist. LMRDA 1432, 1453, 1738-39.

Every description of a hot cargo agreement in the House and Senate confined its reach to the secondary boycott. Senator McClellan stated that (105 Cong. Rec. 3951-52, in 2 Leg. Hist. LMRDA 1007):

Closely related to the secondary boycott bill is one that would make unlawful a contract whereby an employer agrees in advance that he will not require his employees to handle goods or provide other services for the benefit of an employer who is involved in a labor dispute.



. . . [T]o insure that no hot-cargo clause shall be used as justification for, or in aid of, a secondary boycott, this bill outlaws hot-cargo clauses and provides a penalty against entering into them.

Senator Kennedy stated that (105 Cong. Rec. 6556, in 2 Leg. Hist. LMRDA 1162):

Under the amendment of the Senator from Tennessee, the Teamsters could not picket to enforce an agreement and entering into an agreement would be made an unfair labor practice, so that the Teamsters would not be able to persuade other employers, as a part of the general agreement with them, to refuse to handle goods from another employer who might be engaged in an economic dispute with a union.

Senator Curtis stated that (105 Cong. Rec. 6670, in 2 Leg. Hist. LMRDA 1197):

What it [a hot cargo clause] does is require an employer to agree that his employees do not have to handle goods which the union labels as "hot." And the union will label as hot the goods of any other employer so long as he will not agree to do what the union wants.

Senator Goldwater wrote that (105 Cong. Rec. 17674, in 2 Leg. Hist. LMRDA 1386):

Hot cargo clause: This is a provision in a collective bargaining contract which seeks to permit employees to refuse to perform work on materials or equipment received from or being sent to another employer with whom the union has a primary dispute.

Congressman Rhodes stated that (105 Cong. Rec. 15195, in 2 Leg. Hist. LMRDA 1543):

In the hot cargo situation, . . . a classical case would be where a union signed a contract with an employer stating that if the union so advised the employer, that the employer would not make his employees work on material from a plant which, for some reason, the union has blacklisted.

Congressman Elliott wrote that (105 Cong. Rec. 15552, in 2 Leg. Hist. LMRDA 1588):



A hot-cargo clause in a collective-bargaining agreement normally provides that employees will not be required to handle material from, or designated to plants where a union is conducting a strike.

Congressman Kearns wrote that (105 Daily Cong. Rec. A4308 (May 21, 1959), in 2 Leg. Hist. 1750):

It is made an unfair labor practice for an employer to enter into any agreement, including a "hot cargo" contract, to engage in a secondary boycott.

Congressman Wolf introduced an analysis which stated that (105 Daily Cong. Rec. A6654 (August 3, 1959), in 2 Leg. Hist. LMRDA 1777):

A hot-cargo clause in a collective bargaining agreement normally provides that employees will not be required to handle material from or destined for plants where a union is conducting a strike.

Congressman Hagen wrote that (105 Daily Cong. Rec. A8248 (September 15, 1959), in 2 Leg. Hist. LMRDA 1818):

A union cannot . . . Force the second company, by strike or otherwise, to sign an agreement that it will not deal with the target company. Such a hot cargo agreement is illegal, and existing contracts of this type are declared unforcible and void.

The upshot of the history and purpose behind the enactment of section 8(e) was succinctly expressed by Senator Goldwater in a question-and-answer analysis (105 Daily Cong. Rec. A8358 (September 24, 1961), in 2 Leg. Hist. LMRDA 1829):

They've plugged one more [loophole] which is the secondary boycott in futuro, or to put it more plainly, it's the agreement by an employer to permit a secondary boycott to be carried on against him. That's the hot cargo.

Now, the term "cargo" is misleading, because it gives the impression that this only involves transportation activities. But, actually, the term should really be "hot goods". "Hot goods" are goods which come from any enterprise or business or plant or establishment or factory which has a dispute with the union. Those are hot goods.

Question. Does it also apply if there is no union?

Answer. It doesn't make any difference. A union can have a dispute with an employer even if there's no union, and the dispute can be precisely that. What a hot cargo agreement is, is this: The union goes to Employer A and says, "We want you to sign a contract with us which will contain a provision that you will not require your employees to handle any goods or perform any services that come from another employer with whom we have a dispute." In other words, it's an agreement to enter into a secondary boycott.



APPENDIX C**DIVISION IN MOTOR TRANSPORTATION BETWEEN  
OVER-THE-ROAD SHIPMENT AND LOCAL CARTAGE**

The purpose of this appendix is to show that major freight agreements negotiated in collective bargaining divide motor transportation into over-the-road shipment and local cartage. The information in this appendix is taken from a National Over-The-Road and Local Cartage Study made by the International Brotherhood of Teamsters. This study compares all the provisions of twenty over-the-road agreements using the Central States Over-The-Road Motor Freight Agreement as the basis of comparison. The Central States agreement is in evidence in this case as Respondent's Exhibit 7 and excerpts from it appear at J.A. 214-229. This appendix is limited to those provisions of the agreements which bear on the division of work between over-the-road shipment and local cartage. Included in the study are the following twenty over-the-road agreements:

- (1) Central States Over-the-Road Motor Freight Agreement  
Ill., Ind., Iowa, Kan., Mich., Minn., Mo., Neb., N.D., Ohio,  
S.D., Wisc., Louisville, Kentucky and Huntington and  
Wheeling, W. Va.
- (2) Southern Conference Over-the-Road Motor Freight Agreement  
Ark., La., Okla., and Texas except El Paso
- (3) Southeastern Area Over-the-Road Motor Freight Agreement  
Ala., Fla., Ga., Miss., Tenn., and Kentucky except Louis-  
ville.
- (4) Western Conference Over-the-Road Master Agreement  
Ariz., Calif., Colo., Idaho, Mont., Nev., N.Mex., Ore., Utah,  
Wash., Wyo., and El Paso, Texas
- (5) Carolina Freight Council Over-the-Road Agreement  
Locals: 61, 71, 391 and 509
- (6) Virginia Freight Council Over-the-Road Agreement  
Locals: 171, 539, 592 and 822
- (7) Western Pennsylvania Motor Carriers Assn.  
(J. C. 40) Locals: 30, 110, 249, 261, 397, 453, 491, 538,  
564, 585, 872 and 963

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- (8) West Virginia Freight Council Over-the-Road Agreement  
Locals: 175, 789 and 913
- (9) Central Pennsylvania Motor Carriers Over-the-Road Agreement  
Locals: 229, 401, 429, 430, 764, 771, 773 and 776
- (10) Maryland-District of Columbia Freight Council Over-the-Road Agreement  
Locals: 557 and 639
- (11) Maryland-District of Columbia Freight Council Over-the-Road Agreement  
Locals: 453 and 992
- (12) New York State Teamsters Over-the-Road Freight Agreement  
Locals: 65, 118, 182, 294, 317, 449, 506, 529, 648, 649, 687 and 693
- (13) Bedford, Pennsylvania Area Long Haul Road Agreement  
Local 453
- (14) Harrisburg, Pennsylvania Relay Agreement  
Local 776
- (15) New England Freight Agreement  
Locals: 25, 42, 49, 59, 170, 191, 251, 404, 437, 443, 477, 493, 526, 653, 671 and 677.
- (16) Maine Freight Agreement  
Local 340
- (17) New Hampshire General Transportation Agreement  
Local 633
- (18) Vermont General Transportation Agreement  
Local 597
- (19) General Trucking Road Agreement  
Local 701
- (20) Motor Transport Labor Relations, Inc.  
Locals: 107, 312, 331, 384, 470 and 676.

1. CITY OR LOCAL WORK

Article 1, Section 3, of the Central States agreement, entitled, "City or Local Work," provides that (J.A. 216):

14 Local dock work or city pickup and delivery service is not subject to the terms and  
 15 conditions of this Agreement, but is subject to separate agreements entered into  
 16 between the Employer and the involved Local Union. Employees subject to this  
 17 Agreement shall not be permitted to perform dock work or city pickup and delivery  
 18 service, except as specifically permitted herein. At no time shall any provision of  
 19 this contract permitting pickup and delivery supersede the provisions of any local  
 20 cartage contract which prohibits such pickup and delivery.  
 21 The prevailing Local Union city cartage contract shall govern all wages and con-  
 22 ditions on runs exclusively within a radius of twenty-five (25) miles of the home  
 23 terminal, provided the hourly wage rates are equal to or higher than the peddle rate  
 24 in this contract; otherwise the peddle rate shall apply. These restrictions on city  
 25 or local work are applicable in all Areas in which the employer has terminals or  
 26 makes pickups or delivery in connection with over-the-road operations.

The corresponding provisions of other over-the-road agreements provide that:

(a) Southern, Art. 1, Sec. 3:

On Line 18 between the words "service" and "except" insert - in any instance in which such work is covered by separate Agreement between the Employer and a Local Union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, - AND

On Line 18 following the word "herein" delete all language through Line 26.

(b) Southeast, Art. 1, Sec. 3:

On Line 18 between the words "service" and "except" insert - where the performance of such work conflicts with the Local City Pickup and Delivery Agreement between the Employer and a Local Union affiliated with the I.B.T.C.W. & H. of A. and - AND

On Line 18 following the word "herein" delete all language through Line 26.

(c) Western, Art. 1, Sec. 4.

Local dockwork and city pick-up and delivery service is not subject to the terms and conditions of this Supplemental Agreement but is subject to separate agreements entered into between the Employer and the involved Local Union, except in Local Unions where, by past practice, short line and peddle runs come within the scope of the city agreement. Employees subject to this Supplemental Agreement shall not be permitted to perform dock work, city pick-up and delivery, short line or peddle service, except as specifically permitted herein. At no time shall any provision of this Supplemental Agreement permitting city pick-up and delivery, short line, or peddle, supersede the provisions of any local pick-up and delivery or cartage agreement, which prohibits such city pick-up and delivery, short line or peddle operations.

The prevailing Local Union city pick-up and delivery and cartage agreements shall govern all wages and conditions on runs exclusively within the radius established by "past practices" for city, pick-up and delivery and cartage agreements, provided the hourly wage rates are equal to or higher than the over-the-road rates in this Supplemental Agreement. Otherwise, the over-the-road rates shall apply. Peddle runs and short line runs are subject to the Over-the-Road Agreement but at no time will drivers receive less than the hourly rates and overtime conditions of the city pick-up and delivery and cartage agreements.

(d) Carolina, Virginia, same as Southeast.(e) Western Pa. Motor Carriers, Art. 1, Sec. 3.

On Line 18 following the word "herein" delete all language through Line 26, and substitute: The prevailing Local Union city cartage contract shall govern all wages and conditions of runs exclusively within a radius of the home terminal, provided the hourly wage rates are equal to or higher than the rate in this contract.

(f) West Virginia, Art. 1, Sec. 3.

On Line 24 following the word "apply" delete all language through Line 26.



(g) Central Pennsylvania, Art. 1, Sec. 4.

On Line 21 delete all language through Line 26 and substitute: The prevailing Local Motor Freight Agreement shall govern all wages and conditions of runs exclusively within a radius of the home terminal, provided the hourly wage rates are equal to or higher than the rate in this Agreement.

(h) Baltimore - D. C., Art. 1, Sec. 3.

On Line 22 following the word "radius" delete all the language through the word "apply" on Line 24 and substitute: of forty (40) miles of City Hall, and in Washington, D. C., it shall be the Nation's Capitol.

(i) Cumberland - Hagerstown, same as Baltimore - D.C.

(j) Upstate New York, Art. 1, Sec. 3.

On Line 22 substitute fifty (50) for twenty-five (25).  
On Line 24 following the word "apply" delete all the language through Line 26.

(k) Bedford, Pa. Relay, Art. 1, Sec. 3.

On Line 21 delete all language through Line 26.

(l) MTLR, Art. 1, Sec. 3.

Section 3 - Operations

This Agreement shall cover all over-the-road operations and all peddle operations between forty (40) and sixty (60) miles. Road drivers shall not be permitted to perform dock work or city pickup and delivery service except as specifically permitted in this Agreement. At no time shall any provisions of this Agreement permitting pickup and delivery supersede the provisions of any Local Cartage Agreement which prohibits such pickup and delivery.

The prevailing Local Union City Cartage Agreement shall govern all wages and conditions on runs exclusively within a radius of forty (40) miles from City Hall. These restrictions on city or local work are applicable in all areas in which the Employer has terminals or makes pickups or delivery in connection with over-the-road operations.

2. PICKUP AND DELIVERY LIMITATIONS

Article 23 of the Central States agreement, entitled "Pickup and Delivery Limitations," provides that (J.A. 217-218):

- 1 The operations shall be dock to dock, and there shall be no pickups or deliveries
- 2 permitted at either end of the run except that one pickup of a solid load at point of
- 3 origin and one delivery of a solid load at destination shall be allowed provided that
- 4 the driver receives the following rate or the prevailing city scale, if higher, for such
- 5 service, including time lost through delivery. At no time shall any provision of this
- 6 contract permitting pickup and delivery supersede the provisions of any local cartage
- 7 contract which prohibits such pickup and delivery.
- 8                               Effective Feb. 1, 1961 . . . . . \$2.73 per hour
- 9                               Effective Aug. 1, 1961 . . . . . 2.76 per hour
- 10                              Effective Feb. 1, 1962 . . . . . 2.84 per hour
- 11                              Effective Feb. 1, 1963 . . . . . 2.94 per hour
- 12 Pickup and delivery shall not be permitted where a driver or drivers or driver and
- 13 helper have driven 225 miles, or on any run which cannot be completed in ten con-
- 14 secutive hours from point of origin to final destination, including pickup and delivery.
- 15 In no event shall pickup or delivery be permitted in any city having a population of
- 16 600,000 or more, based upon the 1950 census. It is further agreed that all pickup
- 17 and/or delivery limitations in this Article shall not prohibit a driver from making
- 18 pickups and/or deliveries at points en route and intermediate terminals.
- 19 The same pick-up and delivery limitations shall apply where the pick-up and/or de-
- 20 livery is made in the Southeast Area, Southwest Area, the Eastern Conference Area,
- 21 and Western Conference Area, as established by awards of the Executive Board of
- 22 the International Union.
- 23 Peddle-run drivers shall be allowed to perform their normal duties of their runs in the
- 24 seventy-five (75) mile radius.
- 25 It is specifically agreed that none of the limitations contained in this Article shall
- 26 apply to the transportation of iron, steel and perishable commodities as defined in
- 27 ARTICLES 39 and 40 of this Agreement and except where ARTICLE 6 prevails.

The corresponding provisions of other over-the-road agreements provide that:

(a) Southern, Art. 1, Secs. 4, 5.

The operations shall be from dock to dock and there shall be no pickup or deliveries permitted at either end of the run except one (1) pickup of a solid load at point of origin and one (1) delivery of a solid load at destination shall be allowed provided that the employee receives the hourly rate of pay provided for by this Agreement for such services, including time lost through delivery. (Sections 3 and 4 do not prohibit a drop at a consignee outside of the Commercial Zone).

Neither pickup at origin nor delivery at destination shall be permitted where an employee or employees, or employee and helper have driven two hundred fifty (250) miles, or any run which cannot be completed in ten (10) consecutive hours from point of origin to final destination, including such pickup and delivery. On any run of more than two hundred fifty (250) miles delivery must be made to a terminal where terminal facilities exist. No other limitations shall apply on two hundred fifty (250) mile delivery and/or pickup.

(b) Southeast, Art. 1, Secs. 4, 5.

The operations, other than those of a certificated irregular carrier, shall be dock to dock and there shall be no pickups or deliveries permitted at either end of the run except that one pickup of a solid load at point of origin and one delivery of a solid load at destination, shall be allowed provided that the driver receives the applicable hourly rate of pay for time lost through delivery. Peddle run drivers shall be allowed to perform the normal duties of their runs.

Neither pickup at origin nor delivery at destination shall be permitted where a driver or drivers, or driver and helper have driven two hundred fifty (250) miles, or on any run which cannot be completed in ten (10) consecutive hours from point of origin to final destination, including such pickup and delivery.

(c) Western, Art. 1, Secs. 5, 6.

Section 5 - Pick-Up and Delivery Limitations

(a) The operations shall be dock to dock, and there shall be no pick-ups or deliveries permitted at either end of the run except that one (1) pick-up of a solid load at point of origin and one (1) delivery of a solid load at destination shall be allowed provided that the driver receives the applicable regular hourly rate in the agreement or the prevailing city scales, if higher, for such service, including time lost through such pick-up and/or delivery; and provided further that the driver making such pick-up and/or delivery at either end of the run shall not be permitted to work at transferring cargo on or off the equipment.

(b) At no time shall any provision of this contract permitting pick-up and delivery supersede the provisions of any local cartage or pick-up, delivery and dock agreement which prohibits such pick-up and/or delivery by over-the-road drivers.

(c) Pick-up and delivery shall not be permitted where a driver or drivers or driver and helper have driven 225 miles, or on any run which cannot be completed in ten (10) consecutive hours from point of origin to final destination, including pick-up and delivery. In no event shall pick-up or delivery be permitted in any city having a population of 600,000 or more, based upon the 1960 census. It is further agreed that all pick-up and/or delivery limitations in this Article shall not prohibit a driver from making pick-ups and/or deliveries at points en route and intermediate terminals. This is not intended to interrupt the normal flow of freight where there is no local union, terminal or facility.

(d) Pickup and Delivery Enroute

In respect to drivers making pick-ups and/or deliveries at points en route and at intermediate terminals, drivers engaged in over-the-road operations including operators of leased equipment and contract haulers, shall not be allowed to load or unload freight or perform any other duties coming within the territorial coverage of a local wage Agreement, or an agreed upon area, except as hereinabove provided. Drivers may, however, be permitted to load or unload a partial load of freight on a through run where such drops or pick-ups are made outside the normal hours when the dock is operated. Any abuse of this privilege shall be subject to the grievance procedure of the Master Freight Agreement.

Other Areas

The same pick-up and delivery limitations shall apply where the pick-up and/or delivery is made in the Southeast Area, Southwest Area, the Eastern Conference Area, and Central Conference Area, as established by awards of the Executive Board of the International Union.

(e) Short Line or Peddle Operation

A short line or peddle operation is the operation of a driver making a round trip which extends beyond the territorial coverage of a local wage agreement, and which does not require the driver to lay over for a rest period during such round trip constituting a part or division of a longer operation in which there is a continuous through movement of equipment and lading with changes of drivers at established division points, shall not be considered a short line operation. Short line operations shall include loading and unloading of freight.

A short line driver or peddle run driver may be permitted at a point of destination or point of origin, but not both, during his tour of duty, to pick up a continuing through run, but in no event shall a line driver who has hours to work have his dispatch interrupted to have the short line or peddle driver complete his run.

(f) Higher Local Areas

Peddle run or short line drivers shall be restricted to the loading and/or unloading of freight from the driver's own equipment only. If such driver operates into an area where the rate of pay under which he works, conflicts with local area rates he shall receive the higher hourly rate and daily overtime after eight (8) hours.

(g) Exceptions on Certain Commodities

Pick-up and delivery restrictions contained in this Article shall not apply to drivers hauling solid loads of the following commodities: Iron and steel items, to wit: Angles, Bands, Bars, Beans, Billets (Blands), stampings or shapes unfinished in bundles or lifts, Channels, Coils, Piling, Plates, Rods, Sheets, Skelps, slabs, Strip, Tubing, Coiled rods, Wire in Bundles, Rolling Mill Rolls and individual castings, weighing more than 250 lbs.; Pipe; Perishable commodities, to wit: Fresh Meat, Poultry, Eggs and Butter (fresh or frozen), Fluid Milk, Frozen Foods, Fresh Fruits and Vegetables, Fresh Dairy Products, Fresh Fish.

Section 6 - Riders to Agreements

Riders to this Supplemental Agreement, describing the radius established by past practice for city pick-up and delivery contracts, as well as those riders providing for better wages, hours and working conditions than those provided in this Supplemental Agreement, which have previously been negotiated and put into effect by Local Unions and Employers, shall be reduced to writing and executed by the Employer and the Local Union or Local Unions affected and such riders shall be approved by the Western Master Freight Division. No new riders to Supplemental Agreements shall be negotiated without the approval of the Western Master Freight Division.

(d) Carolina, Art. XXIII.

Same as Central States except -

On Lines 8, 10 and 11 substitute September for February.

On Line 9 substitute March for August.

On Line 13 substitute 250 miles for 225 miles.

On Line 23 delete all the language through Line 24.



(e) Virginia, Art. 23.

Section 1

The operations shall be dock to dock, and there shall be no pickups or deliveries permitted at either end of the run except that one pickup of a solid load at point of origin and one delivery of a solid load at destination shall be allowed provided that the driver receives the following rate or the prevailing city scale, if higher, for such service, including time lost through delivery. At no time shall any provision of this contract permitting pickup and delivery supersede the provisions of any local cartage contract which prohibits such pickup and delivery.

It is further agreed that all pickup and/or delivery limitations in this Article shall not prohibit a driver from making pickups and/or deliveries at points enroute and intermediate terminals.

Section 2

The same pickup and delivery limitations shall apply where the pickup and/or delivery is made in the Southeast Area, Southwest Area, the Central Conference Area, Western Conference Area, and other areas within the Eastern Conference Area, as established by awards of the Executive Board of the International Union.

Section 3

It is specifically agreed that none of the limitations contained in this Article shall apply to the transportation of iron, steel and perishable commodities as defined in Articles 35 and 36 of this Agreement and except where Article 6 prevails.

Section 4

No road driver shall be required to help load and/or unload his equipment at company terminals, connecting line terminals or local cartage when there are employees on duty who usually perform dock work at the terminal, however, the driver will be required to check the freight which is loaded and/or unloaded.

(f) Western Pa. Motor Carriers, Art. XXII.

(a) Road Drivers will be permitted to make pickups and/or deliveries enroute, intermediate to, or at destination provided, however, that drivers shall receive additional compensation at their regular hourly rate for all time spent in

such loading, unloading or off-route mileage. Where the Employer maintains a terminal within a Local Union's territorial jurisdiction, Road Drivers will not be permitted to make pickups and/or deliveries within the territorial jurisdiction of that Local Union unless agreed to in writing by the Employer and that Local Union.

At no time shall any provision of this contract permitting pickup and delivery supersede the provisions of any Local Cartage contract which prohibits such pickup and delivery.

(b) Whenever freight is delivered or picked up by Road Drivers engaged in road work for an Employer, they shall be paid additional for said extra work by the hour at the regular straight time hourly driver's rate.

(g) West Virginia, Art. XXIII.

SAME AS Central States through Line 11.

On Line 12 delete all the language through Line 27 and substitute: Except at home terminals, road drivers may be required to handle freight to and from their tail gate in connection with the load or loads assigned to them. Road drivers doing combination road and city work in the same week shall be paid in accordance with the provisions of Article I, Section 3, of the West Virginia Freight Council Local Cartage Agreement. It is further agreed that all pickup and/or delivery limitations in this Article shall not prohibit a driver from making pickups and/or deliveries at points en route and intermediate terminals.

Peddle run drivers shall be allowed to perform their normal duties of their runs.

It is specifically agreed that none of the limitations contained in this Article shall apply to the transportation of iron, steel and perishable commodities as defined in Articles XXXIX and XLI of this Agreement.

(h) Baltimore - D. C.

Article 23, Section 8

Road Drivers shall not make pick-ups or deliveries except as hereinafter noted. Road Drivers shall not make any pick-ups or deliveries at any point where Local Unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America have jurisdiction, except at Company or connecting line terminals, unless an individual and special agreement exists between the Employer and the Union.



Road Drivers shall make pick-ups and deliveries at points outside of the jurisdiction of other Local Unions but not within a forty (40) mile radius of Baltimore and shall be compensated for each such pick-up or delivery at the rate of \$4.00 for each stop if the amount of freight transferred is 5,000 pounds or more; \$3.00 if the amount of freight is between 1,000 pounds and 4,999 pounds; and \$1.50 if the amount of freight transferred is less than 1,000 pounds.

Road Drivers shall not be required to handle freight (load or unload trucks) at intermediate Company or connecting line terminals where dock employees are on duty. Road Drivers shall not be required to run in convoy.

#### Article 25 - Section 4

(a) The operations shall be terminal to terminal and there shall be no pick-ups or deliveries permitted at either end of the run. Road Drivers shall not make any pickups or deliveries at any point where Local Unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America have jurisdiction, except at company or connecting line terminals, unless an individual and special agreement exists between the Employer and the Local Union.

(b) Road Drivers on mileage rates shall be paid for time spent making pickups and deliveries at points outside of the jurisdiction of other Local Unions, but not within a 40-mile radius of City Hall, except in Washington, D.C., it shall be the Nation's Capitol, and shall receive the appropriate hourly rate for all time spent in making such pickup or delivery, in addition to any other monies earned on such trip.

(c) Road Drivers shall not be required to handle freight (load or unload trucks) at intermediate Company or connecting line terminals, when dock employees are on duty. Road Drivers shall not be required to run in convoy.

#### (i) Cumberland - Hagerstown, Art. 23.

#### Section 6 - Pick-ups and Deliveries

Road Drivers shall not make pick-ups or deliveries except as hereinafter noted. Road Drivers shall not make any pick-ups or deliveries at any point where Local Unions affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America have jurisdiction, except at Company or connecting line terminals, unless an individual and special agreement exists between the Employer and the Union.

Road Drivers shall make pick-ups and deliveries at points outside of the jurisdiction of other Local Unions but not within a 40-mile radius of Company terminals in the Local Unions' jurisdiction, and shall be compensated for each such pick-up or delivery at the rate of \$6.00 for each stop if the amount of freight transferred is 25,000 pounds or more; \$4.00 for each stop if the amount of freight transferred is 5,000 pounds or more; \$3.00 if the amount of freight is between 1,000 pounds and 4,999 pounds, and \$1.50 if the amount of freight transferred is less than 1,000 pounds.

Road Drivers shall not be required to handle freight (load or unload trucks) at intermediate Company or connecting line terminals where dock employees are on duty. Road Drivers shall not be required to run in convoy.

Article 25, Sec. 4 (a) and (b) is the same as the corresponding provision in the Baltimore - D. C. agreement.

(j) New England, Art. 20.

(a) All over-the-road operations shall be from terminal to terminal or to check points or relay points or from any one of these to another.

(b) A Road Driver shall not be permitted to make pick-ups or deliveries within the terminal area of any other Local Union affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, unless permission has been or is granted by the Business Agents of the Local Unions involved, his own Agent and the Agent of the Local Union in the area where the pickup or delivery is to be made.

(c) A Road Driver shall not make any pickup and/or deliveries to a consignee or shipper in any of the terminal areas specified in the Schedule of Trip Rates, but must take the freight into the terminal if the Employer has one there. He shall be paid at the normal rate per hour for all time consumed in effecting such terminal pickups and drops, or delay time at terminals with a minimum of one-half hour.

### 3. STEEL HAUL ONLY

Article 39, sections 1 and 2, of the Central States agreement, entitled "Steel Haul Only," provides that:

- 1 The description of the iron and steel items is as follows:
- Section 1.
- |    |                                 |                                      |
|----|---------------------------------|--------------------------------------|
| 2  | Angles                          | Plates                               |
| 3  | Bands                           | Rods                                 |
| 4  | Bars                            | Sheets                               |
| 5  | Beams                           | Skelps                               |
| 6  | Billets                         | Slabs                                |
| 7  | Blanks (stampings or shapes     | Strip                                |
| 8  | unfinished in bundles or lifts) | Tubing                               |
| 9  | Channels                        | Coiled rods                          |
| 10 | Coils                           | Wire in bundles                      |
| 11 | Pilings                         | Rolling mill rolls and individual    |
| 12 |                                 | castings weighing more than 250 lbs. |
- Section 2.
- 13 One pickup and one delivery of a solid load may be made by the road drivers in the
- 14 event same can be performed within the Interstate Commerce Commission regulations,
- 15 provided, however, no driver shall be compelled to make delivery at final destination,
- 16 who has worked and/or driven ten (10) hours. There shall be no pickup or delivery
- 17 of a solid load in the area under the jurisdiction of I. B. T. Locals 710, 705, 782,
- 18 801, and Independent Local 705, in the Chicago area, other than those that may be
- 19 permitted under the terms of such Locals' agreements.

The Southern, Southeast, Upstate New York, and MTLR agreements contain provisions identical to the foregoing provision of the Central States agreement.

### 4. PERISHABLE COMMODITIES ONLY

Article 40 of the Central States agreement, entitled "Perishable Commodities Only", provides that (J.A. 227-228):

- Section 1.
- 1 The description of the perishable commodities is as follows:
- |   |  |                             |
|---|--|-----------------------------|
| 2 | Fresh meat                                 | Frozen foods                |
| 3 | Poultry, eggs and butter (fresh or frozen) | Fresh fruits and vegetables |
| 4 | Fluid milk                                 | Fresh dairy products        |
- Section 2.
- 5 One pickup and one delivery of a solid load may be made by the road drivers in the
- 6 event same can be performed within the Interstate Commerce Commission regulations,
- 7 provided no driver shall make delivery at final destination who has worked and/or
- 8 driven more than ten (10) hours. Where local conditions do not now permit any such
- 9 pickup and/or delivery, such conditions shall continue. There shall be no pickup or
- 10 delivery of a solid load in the area under the jurisdiction of I.B.T. Locals 710, 705,
- 11 782, 801 and Independent Local 705, in the Chicago area, other than those that may
- 12 be permitted under the terms of such Locals' agreements.

The corresponding provisions of other over-the-road agreements provide that:

(a) Southern, Art. 35, same as Central States Art. 40.

(b) Southeast, Art. 37, same as Central States Art. 40 except:

On Line 8 following the word "hours" delete all the language through Line 12.

(c) Carolina, Art. XXXVII, Virginia, Art. 36, and West Virginia, Art. XLI, same as Central States Art. 40 except:

On Line 9 following the word "continue" delete all the language through Line 12.

(d) Bedford, Pa. Relay, Art. XXXVIII, same as Central States Art. 40 except:

On Line 9 following the word "continue" delete all the language through Line 12 and substitute: There shall be no pickup or delivery of a solid load in the area under the jurisdiction of Teamsters Local Union No. 453.

(e) MTLR, Art. 30, same as Central States Art. 40 except:

On Line 8 following the word "hours" delete all the language through Line 12 and substitute: provided no regular employees will be laid-off or affected because of such deliveries, or where a company uses the equipment for back haul of freight.

REPLY BRIEF FOR PETITIONER

**United States Court of Appeals**

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,091

MEAT AND HIGHWAY DRIVERS,  
DOCKMEN, HELPERS AND  
MISCELLANEOUS TRUCK TERMINAL EMPLOYEES,  
LOCAL UNION NO. 710,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA,

*Petitioner,*

v

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

ON PETITION TO REVIEW AND SET ASIDE  
AND ON CROSS-PETITION TO ENFORCE AN ORDER  
OF THE NATIONAL LABOR RELATIONS BOARD

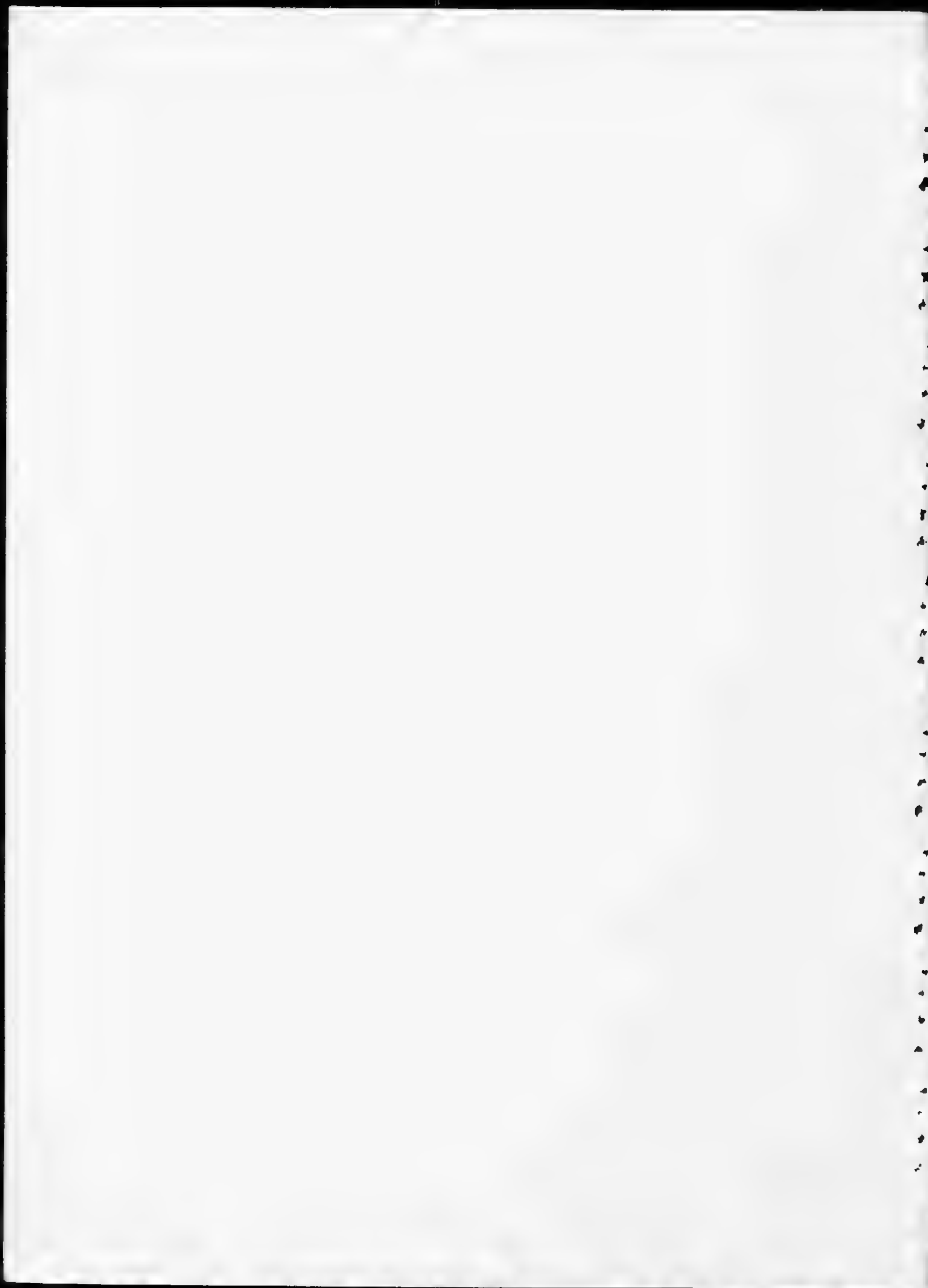
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for the District of Columbia Circuit

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*Nathan J. Paulson*  
CLERK

LESTER ASHER  
MELVIN ROSENBLOOM  
130 North Wells Street  
Chicago 6, Illinois

BERNARD DUNAU  
912 Dupont Circle Building  
Washington, D C 20036



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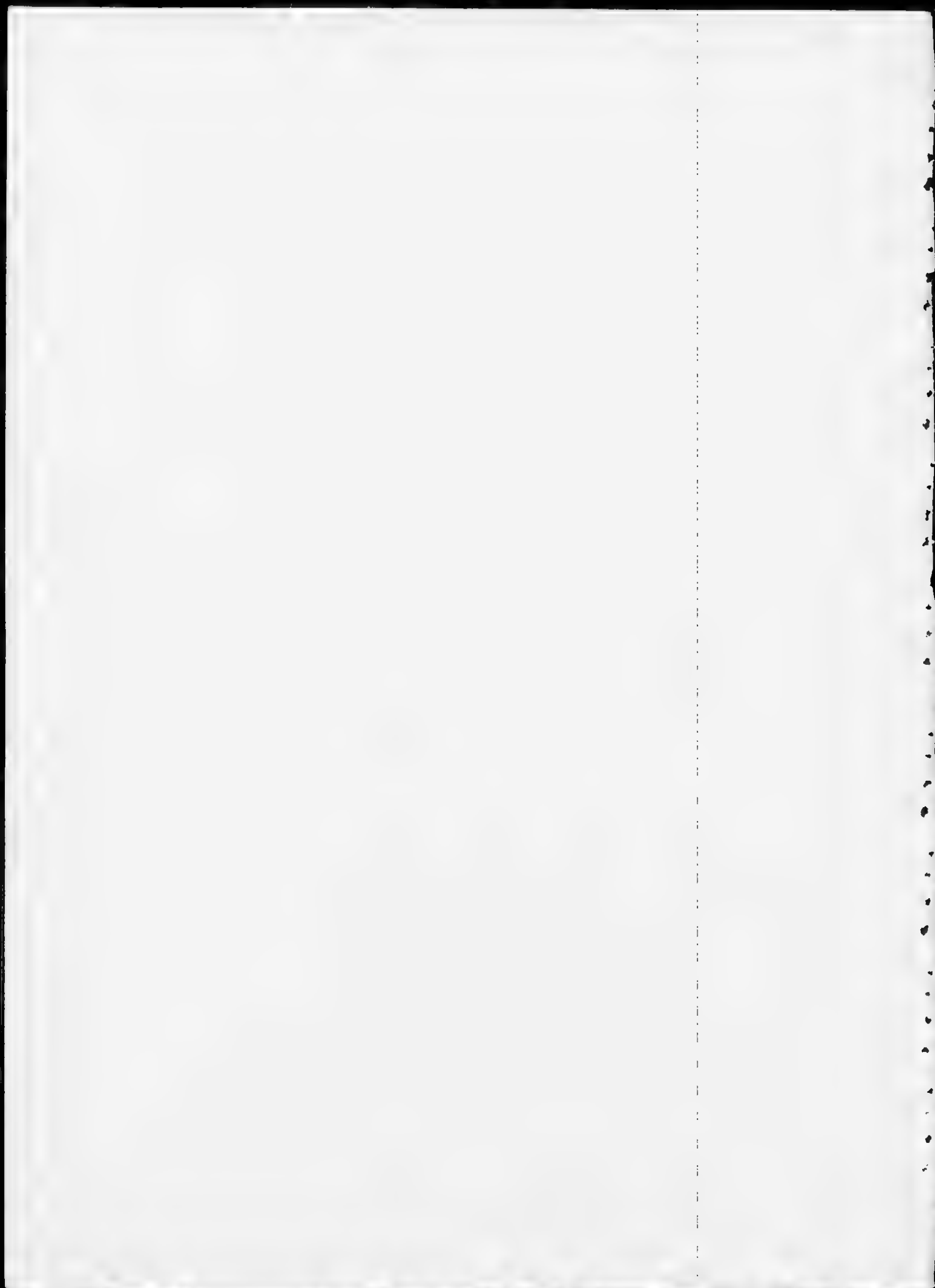
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*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

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ON PETITION TO REVIEW AND SET ASIDE  
AND ON CROSS-PETITION TO ENFORCE AN ORDER  
OF THE NATIONAL LABOR RELATIONS BOARD

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REPLY BRIEF FOR PETITIONER

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**I. By Virtue of Article XII, to the Extent of Available Equipment, Truck Delivery within Fifty Miles of the Chicago Stock Yards Is Performed Exclusively by the Packer's Own Drivers.**

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The Board (Br. pp. 1-2), Armour (Br. p. 2), and Swift (Br. p. 3) unite to quibble about the statement in petitioner's brief (p. 3) that truck delivery within fifty miles of the Chicago Stock Yards is "made by drivers represented by the Union employed by the packer," the objection evidently being that employees of others deliver overflow cartage. Of course employees of others deliver overflow cartage, the subject being covered by that part of Article XII which provides that if the packer has no available equipment "all effort will be made to contract a cartage company who employs members of Local No. 710." The entire presentation in petitioner's brief is based on the fact that the packer's own drivers do the work when the packer has available equipment and others deliver overflow cartage. That is indeed exactly stated in the concluding sentence of the same paragraph in which the words to which objection is taken appear. The Board and amici, by stressing overflow cartage, seek to obscure the central fact that the only time the packer's own drivers do not do the work is "when there is a lack of equipment at the individual plants or branches." This is true even of Swift's packing plant, despite the absence of an Article XII in its 1958-1961 agreement, as its official in charge of the transportation department of the packing plant testified on cross-examination (J.A. 105-106):

Q. You testified, I believe, that you engaged trucking firms to make deliveries within the Chicago area from the Meat Packing Plant to customers; is that correct, sir?

A. Yes, sir.

Q. Do you make such contracts or do you have such an arrangement only when you do not have equipment of your own by which to make such deliveries?

A. Yes, sir.

Q. You do not . . . engage trucking firms to make deliveries from the Packing Plant to customers within the Chicago area if you have equipment of your own by which you can do it?

A. Yes, sir, that is correct.

Q. You do not do it unless you have no equipment of your own?

A. That is correct.<sup>1</sup>

It is simply obfuscatory for the Board and amici to suggest a factual issue when none exists.<sup>2</sup>

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<sup>1</sup> Any implication in Swift's brief (p. 17) that Swift engaged cartage companies to make delivery within 50 miles of the packing plant when it had equipment of its own available is thus contrary to the evidence.

<sup>2</sup> Armour adds a number of other "factual" observations.

1. It states that "Wilson had totally discontinued its slaughtering operations in Chicago by 1953 or 1954" (Br. p. 3). As Armour well knows, slaughtering is but one step in the total packinghouse operation, and discontinuance of slaughtering does not establish coterminous discontinuance of the separate steps of processing and fabricating. See Dictionary of Occupational Titles, Vol. II, p. 703 (2d ed. 1949), which states: "Slaughtering and Meat Packing Industry: This industry covers occupations concerned with the processes of establishments that are engaged in slaughtering of cattle, hogs, sheep, and other animals; in the preparation and packing of meat products; and in the dressing and packing of poultry, rabbits, and other small game." (Emphasis supplied.) Compare the testimony at J.A. 152 pertaining to "meat fabrication and processing."

2. Armour states that petitioner omitted from its brief "any reference to Article XXXIII of Local 710's proposed amendments to the 1958 contract" (p. 3). Armour is referred to page 54 of petitioner's brief for a full statement pertaining to Article XXXIII.

3. Armour states that a "demand" for a commensurate labor standards clause to replace the preference-for-members clause in Article XII was made by the Union on June 5, 1961, and "abandoned in the strike settlement negotiations on June 6 . . ." (p. 4). This echoes the trial examiner's finding (J.A. 21 and n. 12). Armour erroneously cites J.A. 20 and 22 for the examiner's finding, and erroneously cites J.A. 158 for the supporting evidence; G.C. Ex. 1-X which appears at J.A. 158 is simply a written statement of part of an oral amendment to the complaint (J.A. 83), and evidences nothing but an amended allegation. As to the examiner's finding, it suffices to repeat petitioner's exception to it numbered 5 to the Board: "There is no evidence in the record to support these findings. The matter appears in the record solely in the form of an oral motion to amend the complaint which the examiner granted (Tr. 9-11) [J.A. 82-83], but no evidence to support the amendment was adduced. Findings cannot be based on an allegation or inferences drawn from an allegation. Outside the record it may be stated that on June 5, 1961, at the court house, in the course of the preliminary injunction proceeding [Footnote continued on following page.]

## II. The First Part of the New Addendum Is Valid.

### A. The Lack of Economic Viability or Legal Tenability in the Line Drawn by the Board

The key to the legal invalidity of the Board's position is contained in the statement in its brief that a "clause which prohibits all subcontracting during the term of the contract" is ordinarily valid "[a]ssuming that the employer is not subcontracting work at the time such an agreement is made . . . ." (Br. p. 18). According to this formulation, it is valid to agree not to start subcontracting but invalid to agree to stop subcontracting. This line makes no economic or legal sense.

Application of the line would invalidate agreements reached by the procedure spelled out in the basic steel contract of 1963. In the steel industry in 1962, it was agreed that, upon 90 days' written notice given not earlier than May 1, 1963, the parties may bargain upon, and "shall be free to strike or lock-out in support of their position with respect to", the "contracting out of work which could be performed by bargaining unit employees . . . ." 49 LRR 597, Sec. 19(e), 21 (unbound volume). Before then the parties, through their jointly constituted Human Relations Committee, planned to study the matter, explaining that (49 LRR 599, unbound volume):

The Companies have stated that it is their policy and intention to use their employees as much as practicable for work on the properties involved, and to contract out work only when that course is required by sound business considerations. The Union has stated that the Companies have contracted out work which can and should be performed by bargaining unit employees. The Human Relations Committee will study the actual experiences and practices in the field of contracting

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[Continued from previous page]

under Section 10(l) of the Act, respondent [petitioner here] learned for the first time (the matter not having been included in the charges) that the General Counsel was challenging the validity of proposed Article XXXIII, and to meet what was deemed to be the objection to it respondent's counsel presented to representatives of Swift, Armour, and Wilson the proposal alleged in the oral amendment to the complaint. In the ensuing hectic confusion of the injunction proceeding and strike settlement negotiations, and consistent with the employers' manifest indifference to Article XII(l) or proposed Article XXXIII, no one ever got around to doing anything about the proposal."

out to determine what measures are required or desirable to deal with this matter.

In 1963, the parties reached an "experimental" agreement on the subject. 53 LRRM 18. Paragraph 1 of that agreement provides that (ibid.):

(A) Production, service, and day-to-day maintenance and repair work within a plant as to which the practice has been to have such work performed by employees in the bargaining unit shall not be contracted out for performance within the plant, unless otherwise mutually agreed pursuant to paragraph 4. (Emphasis supplied.)

(B) If production, service and day-to-day maintenance and repair work has in the past been performed within a plant under some circumstances by employees in the bargaining unit and under some circumstances by employees of contractors, or both, such practice shall remain in effect with respect to such work performed within the plant, unless otherwise mutually agreed pursuant to paragraph 4. (Emphasis supplied.)

(C) Production, service, and day-to-day maintenance and repair work within a plant as to which the practice has been to have such work performed by employees of contractors may continue to be contracted out unless otherwise mutually agreed pursuant to paragraph 4. (Emphasis supplied.)

Under part (B), where the within-plant work is sometimes performed by the unit employees and sometimes subcontracted, and under part (C), where it is always subcontracted, the subcontracting can be stopped during the contract term if it is "mutually agreed." But under the Board's theory the agreed cessation would be invalid because it discontinues existing subcontracting. Nor is part (A), where the within-plant work is not subcontracted, free of difficulty. For, if subcontracting is agreed upon, under the Board's theory there cannot thereafter be a valid agreement to return to the former status of no-subcontracting.

Nor is this all. Paragraph 2 of the steel agreement pertains, in part, to "maintenance and repair work," other than the "day-to-day"



variety covered by paragraph 1. Such work, in accordance with paragraph 2, "may not be contracted out for performance within the plant unless contracting out under the circumstances existing as of the time the decision to contract out was made can be demonstrated by the company to have been the more reasonable course than doing the work with bargaining unit employees, taking into consideration the significant factors which are relevant." (Emphasis supplied.) Under the Board's theory this part is probably invalid on its face, since it applies indiscriminately to work which in the past may or may not have been subcontracted.

The lack of any economic viability in the Board's theory has already required the Board, since its decision in the instant case, to withdraw from it. Local 603, Milk Wagon Drivers, 145 NLRB No. 42, 54 LRRM 1397. The validity on its face of the following contract provision was not contested:

No customer who normally receives milk or dairy products via deliveries by drivers of the Employer will be permitted to pick up products at the Employer's dock or premises whenever that may possibly result in loss of employment of drivers or a reduction in their hours of work.

The Board found that the drivers of the contracting employer, Pevely, "customarily made deliveries of Pevely's products to customers located within the Greater St. Louis area" (54 LRRM at 1399). Pevely agreed to deliver its milk at its own dock to Drive-Thru, a new business venture, rather than to deliver it by its drivers to the premises of Drive-Thru. The Union struck for the purpose of requiring that milk sold to Drive-Thru be delivered to the latter's premises by Pevely's drivers. As Drive-Thru was a new business venture, to which Pevely's drivers had never before made any deliveries, the General Counsel contended that this could not be work customarily performed by Pevely's drivers and hence the work jurisdiction agreement could not be validly applied to require Pevely's drivers to deliver the milk to Drive-Thru rather than have Drive-Thru pick it up at Pevely's dock. The Board rejected the argument, stating that (id. at 1399):

. . . when Pevely agreed to make dockside sales to Drive-Thru, a customer whose establishment was within the Greater St. Louis area, the drivers of Pevely were in effect deprived of work which they customarily performed.

In striking Pevely, Respondent had as its object the preservation of work which traditionally has belonged to employees in its bargaining unit. Because of this, we would not find that Respondent violated Section 8(e) or 8(b)(4)(i) or (ii)(A). In like vein, as Respondent's object in causing Pevely's employees to strike was to force Pevely to retain the unit work, the dispute was primary in character and not proscribed by Section 8(b)(4)(i) and (ii)(B).

Thus, the Board treated as work "customarily performed" that work which had in fact never been performed because it had never been in existence, Drive-Thru being a new business venture. It thereby gave effect to the "assertion of geographic jurisdiction" over disputed work, albeit within the "Greater St. Louis area" rather than the "Chicago area," the very claim which it deprecated in this case (J.A. 52). And it did so despite the fact that delivery to the Drive-Thru dock rather than pick-up at the Pevely dock would result in precisely that cessation of business which it decried in this case. But it dismissed this factor with these words which are precisely apposite to the instant case as well: "Nor is all conduct that results in a 'cease doing business' violative of Section 8(b)(4)(i) and (ii)(B) of the Act. Lawful primary conduct does not become illegal merely because, as in this case, it incidentally affects the primary employer's business relations with another."

54 LRRM at 1399, n.3. <sup>3</sup>

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<sup>3</sup> These words suffice as an answer to the statement in the Board's brief that it is enough to invalidate the conduct that cessation of business is "an" object of the activity (Br. pp. 9-10). Cessation of business as "an" object of the activity suffices to invalidate it, but only after it is first determined that the activity is secondary rather than primary. But the threshold question whether the conduct is primary or secondary cannot be answered by looking to cessation of business which is the indiscriminate consequence of either activity. Where the activity is primary "the 'an object' test . . . is too narrow . . . " Local 618, Automotive Employees v. N.L.R.B., 249 F. 2d 332, 337-338 (C.A. 8).

We do not quarrel with the Board's disposition in Local 603, Milk Wagon Drivers. It is sound. But where, as in Local 603, work never before done because work "customarily performed," in contradistinction to this case where work formerly done and still in part done becomes work "never customarily performed" (J.A. 50), and where, as in Local 603, cessation of business is irrelevant and incidental, in contradistinction to this case where it constitutes a "major defect" (J.A. 50), it is apparent that the Board's decisional process is at sea. The Board does not state reasons by which it reaches conclusions. It states rationalizations for results. Just the other day, cutting through the Board's uninformative verbiage, the Court of Appeals for the Third Circuit held that a strike against an employer to secure an assignment of work from him was not a secondary boycott. N.L.R.B. v. Local 825, Operating Engineers, 55 LRRM 2116 (January 8, 1964). The same is true here.

**B. The Attempt To Justify the Board's Decision  
on a Basis Not Adopted by the Board.**

To show that the purpose of the first part of the New Addendum is to secure employment of drivers by cartage companies rather than with the packers, the Board's brief (pp. 19-20) and Armour (Br. pp. 14-15) contend that the packers no longer have sufficient equipment to deliver the product using their own drivers, with the result that the work would necessarily be done by the drivers of cartage companies. This contention is in no wise a basis adopted by the Board for its decision. Under familiar principles "a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency." S.E.C. v. Chenery Corp., 332 U.S. 194, 196. "The courts may not accept appellate counsels' post hoc rationalizations for agency action . . . ." Burlington Truck Lines v. United States, 371 U.S. 156, 168.

On the merits, one giant reason for rejecting the contention is that there is not an iota of evidence to support it and none is cited. There is no evidence that the packers' existing equipment is not entirely adequate for the work; there is no evidence that the packers disposed of any

equipment they had as excess; there is no evidence that they could not readily and economically acquire equipment by purchase or lease; there is no evidence that insufficient equipment was at any time advanced by the packers as the reason for resisting the New Addendum. An argument that is rooted in no evidence is no argument.

The Board's brief does not follow Armour in the latter's expatiation of this contention. Armour contends that the over-the-road trip would terminate "at a central dock," from whence it would be transshipped locally by drivers employed by cartage companies (Br. pp. 13-14). Both branches of the statement are wholly erroneous. The New Addendum explicitly states that the over-the-road shipment shall terminate and local delivery begin at "the Chicago city dock or other Chicago distribution or terminal facility of the Employer . . ." To disregard this specific alternative, and act as if only delivery to a city dock would do, does not make the alternative disappear. And even if termination of the over-the-road shipment were confined to the city dock, it still does not mean that local transshipment from that point would be done by the cartage company driver rather than the packer's driver. For the New Addendum is explicit that local delivery from the city dock, just as local delivery from the packer's distribution or terminal facility, shall be "by employees covered by this agreement. It is specifically understood that all deliveries to customers or consignees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement." And the only drivers covered by the agreement with the packers are the packers' drivers. As John T. O'Brien explained for the Union, "the contract carrier or the common carrier would deliver the meat to the packer's plant or branch, or whatever facility he may have for receiving it; and, in turn, our local men would make the city deliveries of the product hauled in from the various states outside of Illinois" (J.A. 11-12; 153, emphasis supplied). And the Union's manifest indifference to whether the over-the-road shipment terminated at the city dock or packer's facility, so long as local transshipment was performed by the packer's driver, is plain from the fact that the requirement

of delivery "only to a city dock" was deleted from eleven of the seventeen agreements it entered into incorporating the First Addendum (J.A. 19, n. 9; 147-148).<sup>4</sup>

It is thus apparent that Armour makes bricks of straw when it attempts to show that the Union's true interest lies in the employment of drivers by cartage companies rather than by packers. The common sense of the situation is too plain for distortion. Two hundred and fifty three drivers who used to work for Swift, Armour, and Wilson lost their jobs with these packers. The Union wants these 253 drivers back on the packers' payroll. To accomplish this the work that the 253 drivers formerly did has to be restored to them. The work is restored to them if over-the-road shipment terminates without local delivery; the latter work is then to be performed by the packer with its own drivers; and the 253 drivers have thus regained their jobs. This is what the first part of the New Addendum achieves. Its purport is too obvious and forthright to treat it as an artifice, to relegate it to limbo as the product of the Union's Machiavellian machinations designed to conceal that its true interest lies elsewhere.

The second part of the New Addendum is just as clearly a subordinate adjunct of the first part. It constitutes realistic recognition that situations do sometimes arise when the packer may have insufficient equipment to do the work with its own drivers, and in that circumstance it permits the carrier to contract with a cartage company, but harnessed by the requirement that the cartage company maintain the same or better labor standards so as to prevent the use of the cartage company from being perverted into a means of undercutting the work and standards for which the Union has contracted with the packer. The second part of the New Addendum thus accomodates the packer's interest in

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<sup>4</sup> Thus Swift is wrong (Br. p. 11) in attributing even to the First Addendum an inflexible purpose to require delivery only to the city dock.



flexibility with the Union's interest in preventing abuse of that flexibility as an undercutting device. It is all as simple as that.<sup>5</sup>

### III. The Second Part of the New Addendum Is Valid.

#### A. A Number of Contentions Advanced in the Briefs Not Adopted by the Board as a Basis of Decision

To support the invalidation of the second part of the New Addendum, a number of contentions are advanced, none of which are part of

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<sup>5</sup> Armour makes certain other contentions which can be briefly treated:

1. Armour states that by reason of the relocation of facilities outside of Chicago the packers "were now compelled" to deliver directly to customers (Br. p. 6, emphasis supplied). Nothing compels direct shipment. It is simply the method Armour chooses to use. The Union's effort to change the method encounters no physical obstacle to fulfillment.

2. Armour contends that the New Addendum should be considered as "a single indivisible clause . . ." (Br. p. 11). But, in keeping with the New Addendum's structure and purport, the Board treated the two parts separately, and Armour cannot seek to sustain the Board's position on a basis different from that which the Board adopted. Armour further contends that, if either part of the New Addendum is invalid, it "should be struck down in its entirety" (Br. p. 14, n. 3). But the consequence of invalidating one part but not the other would simply be an order which, while prohibiting a strike and cognate means to secure entry into the invalid part, leaves the valid part in the area of free economic contest, with the Union at liberty to seek it, and the employer to resist it. Separating the valid from the invalid was the course followed by the Board in Amalgamated Lithographers (Employing Lithographers of Greater Miami), 130 NLRB 968, enforced as modified, 301 F. 2d 21 (C.A. 5), and its necessity is too plain for anything but statement. Cases cited, Pet. Br. p. 59. The "an object" test, which Armour invokes and is treated supra, p. 7, n. 3, requires nothing different.

3. Armour marshals its "economic and policy considerations" for resisting entry into the New Addendum (Br. pp. 18-19). There is no evidence of record to support the argument, and no materials cited of which judicial notice might be taken. But the vice lies deeper. The place for the argument is at the bargaining table. Pet. Br. p. 43. As the dissenters stated, "The Packers contend that such deliveries are now uneconomical or inefficient because they require transshipment at their Chicago docks, but it is not for the Board to decide that their interest in economy and efficiency outweighs the interest of the Union in reclaiming the work previously performed by the 250 truckdrivers. These are matters to be resolved by the parties through collective bargaining" (J.A. 70-71).

the Board's rationale. This alone requires their rejection (supra, p. 8). On the merits the contentions are baseless.

1. The Board's brief argues that, as work cannot be contracted to a cartage company unless the packer does not have sufficient equipment of its own, this is ample safeguard against loss of unit work, and hence the requirement that the cartage company to which the work is contracted have commensurate labor standards cannot be designed to protect the contract standards of the packer's employees but must be for the purpose of dictating the standards of the employees of others (pp. 27-28). According to this formulation, if subcontracting is allowed only when sufficient equipment is unavailable, the qualification is valid; or, if subcontracting is allowed only when the subcontracted work is let to a cartage company having commensurate labor standards, this qualification too is valid; but, if the two valid qualifications are united, the result is invalidity. As a matter of logic it is odd to have two rights add up to a wrong. As a matter of experience it is odd to impute anything but prudence to a double-locked door. The common sense of the situation was succinctly put by Board member Brown in dissent (J.A. 72-73):

. . . the second part of the New Addendum recognizes realistically that situations sometimes do arise when the packer may have drivers of his own available but insufficient equipment to carry out his operations. In such situations, the Addendum would permit the packer to contract with a cartage company; but only when the cartage company maintains the same or better labor standards. The Addendum thus discourages the packer's use of a cartage company as a device for undermining the work and standards which the packer had agreed to maintain for his employees. Accordingly, the New Addendum serves both the packer's interest in flexibility and the Union's interest in preventing that flexibility from undercutting the job security of the packer's own employees through subcontracting their work for performance under substandard conditions.

If nothing else, the commensurate standards requirement removes an incentive from the packer to permit his own equipment to fall into disrepair or to fail to replace or acquire equipment as needed.



2. The Board's brief argues that "it is not necessary here to determine whether a pure work standards clause would be lawful" (Br. p. 27). It is time to stop equivocating. The only thing "impure" about the clause in this case is the incorporation of two safeguards into it. And the Board has already invalidated the following "pure" clause appearing in Local 585, Painters Union (Falstaff Brewing Corp.), 144 NLRB No. 22, 54 LRRM 1001:

The Company may, during the life of this Agreement, award contracts for the execution of construction work in this plant to contractors who pay the prevailing wage scale in the area and grant to their employees prevailing working conditions.

The Board has taken the flat position that any commensurate standards clause is invalid, and it is necessary for its brief to face and defend that position.

3. The Board's brief (p. 24) and Swift (Br. pp. 18, 23) contend that a limitation of subcontracting to a company which has commensurate labor standards is in reality a limitation to a company which operates under the Union's contract. The argument is that the only company that the Union can be expected to agree has commensurate labor standards is one operating under its contract, and to avoid difficulty with the Union, the contractor will engage only such a company. This is pure calumny for which the Supreme Court has had to take the Board to task in the past. Pet. Br. p. 55. The terms of the second part of the New Addendum explicitly refute the notion that the cartage company must be under contract with the Union, and there is not a word in it which expresses or implies the approval of the Union in the choice of a cartage company. As with any other difference between the employer and the Union concerning application of the agreement, should a dispute arise between the two concerning the question whether a particular cartage company maintains commensurate standards, it would be subject to "final" determination pursuant to the grievance procedure of the agreement (Res. Ex. 6, Art. VI). If a more explicit standard than commensurate conditions is desired, nothing prevents an employer and a union from negotiating particularized criteria to denote equivalence. But to argue, without any supporting

evidence of any kind, that commensurate standards in reality limits the acceptable cartage company to one operating under a union contract is to deny the civilized premise that a "contract is not to be assumed to contemplate unlawful results unless a fair construction requires it upon the established facts." Cin., P.B.S. & P.P. Co. v. Bay, 200 U.S. 179, 184.<sup>6</sup>

**B. The Provisos to Section 8(e) Pertaining to the Construction and Clothing Industries Do Not Imply that, in All Other Industries, a Limitation upon the Class of Persons to Whom Work May Be Subcontracted to those Who Maintain Commensurate Labor Standards Is Prohibited.**

Although not given as a reason in this case, the Board has since stated that the "explicit exemptions in the provisos to Section 8(e) permitting such subcontracting limitations in building construction and garment industries only serve to make clear the Congressional purpose in 1959 to prohibit it elsewhere."<sup>7</sup> The Board (Br. p. 26), Swift (Br. pp. 20-21), and Armour (Br. pp. 9-10) echo this view. The argument is that, as express leave to condition subcontracting has been granted in the clothing and construction industries, by negative implication in all other situations and industries, if subcontracting is to be permitted at all, it must be permitted without limitation. We proceed to show the invalidity of the argument.

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<sup>6</sup> The Board's brief (pp. 20-21) and Swift (Br. p. 21) quote from this Court's decision in Local 636, United Association v. N.L.R.B., 108 U.S. App. D.C. 24, 30, 278 F. 2d 858, 864. That case involved a typical product boycott. Pipefitters represented by one union refused to handle pipe because it had been fabricated by employees represented by another union. This situation is identical with that considered and differentiated in our brief at pp. 50-51.

The Board's brief wrongly reads Local 24, Teamsters v. Oliver to be limited to an owner who himself drives his vehicle in the carrier's service (p. 23, n. 14). The Supreme Court's first opinion may be read that way (358 U.S. 283), but its second opinion is explicit in not confining it to the owner when he drives his own vehicle but in extending it to the owner who hires employees to drive his vehicles for him (362 U.S. 605).

<sup>7</sup> United Mine Workers (Arthur J. Galligan), 144 NLRB 1037, 54 LRRM 1037, 1040.

## 1. The Construction Industry.

The first proviso states that nothing in section 8(e) "shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work . . . ." This proviso maintains the status quo as it existed prior to the enactment of section 8(e) with respect to agreements pertaining to the subcontracting of work at the construction site. H. Rep. No. 1147, 86th Cong., 1st Sess., 39-40, in 1 Leg. Hist. LMRDA 943-944; 105 Cong. Rec. 17900, in 2 Leg. Hist. LMRDA 1433. This means that agreements otherwise prohibited by section 8(e) may in this situation and industry be validly entered into and voluntarily observed but not coercively enforced. Ibid; N.L.R.B. v. Local 825, Operating Engineers, 55 LRRM 2112, 2115 (C.A. 3, Jan. 8, 1964); cf., Laborers, Local 383 v. N.L.R.B., 323 F. 2d 422 (C.A. 9). In short, the law as enunciated by the Supreme Court in Local 1976, United Brotherhood of Carpenters v. N.L.R.B., 357 U.S. 93, continues to apply.

Obviously nothing in the preservation of the status quo in this situation and industry can reveal the extent to which the status quo was changed in other situations and industries. We know that a true hot cargo agreement may be validly entered into and voluntarily observed in this situation and industry. We know too that this is not true in other situations and industries except as the second proviso preserves the status quo in the clothing industry. But nothing in either of these propositions establishes that subcontracting provisions which are not in the hot cargo class have also been invalidated. In short, all that the proviso shows is that it saves whatever is barred by section 8(e). But it does not tell us what section 8(e) bars.

## 2. The Apparel and Clothing Industry.

The second proviso states that "for the purposes of this subsection (e) and section 8(b)(4)(B) the terms 'any employer', 'any person engaged in commerce or an industry affecting commerce', and 'any person' when used in relation to to the terms 'any other producer, processor, or manufacturer,', 'any other employer', or 'any other person' shall not include persons in the relation of a jobber, manufacturer, contractor, or

subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: Provided further, That nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception."

This proviso too in large part maintains the status quo as it existed in the apparel and clothing industry prior to the 1959 amendments.<sup>8</sup> The story begins in 1949. The method of manufacture in the apparel industry is a highly integrated process in which the garment is designed and cut by the manufacturer or jobber, then sent to a contractor or subcontractor for sewing and finishing, and finally returned to the manufacturer or jobber for sale and distribution. In 1949, in considering then pending amendments to the Taft-Hartley Act, a colloquy took place on the Senate floor between Senators Ives and Taft. Senator Ives described the method of manufacture in the garment industry, stated that in the union's dispute with either the manufacturer or contractor economic pressure might be applied to the other, and asked whether this would constitute a secondary boycott, expressing his firm belief that it would not. Senator Ives' comment and question reads in part as follows (95 Cong. Rec. 8709):

It has been suggested that this might fall within the ban of the literal language of section 8(b)(4) and section 303 of the Taft-Hartley Act or of section 8(b)(4) and sections 16 and 17 of the Taft substitute. I am sure this was never the intention of the sponsors of the act or of the Congress. The jobber and his contractors are obviously engaged in a unified and integrated production effort, and they do not stand as neutrals with respect to one another in any labor dispute against the other. Rather, they are allies because they are engaged in a common enterprise. It seems plain to me that they are not to be deemed separate employers, but, rather, a single unified employer of all workers

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<sup>8</sup> For a full statement of the origin, evolution, and present status of subcontracting control in the garment industry, see the decision of the Federal Trade Commission in California Sportswear & Dress Assn., Inc., 54 FTC 835.

engaged in every phase of the manufacture of the garments, no matter on whose premises the workers are located. Economic pressure exerted against either jobber or contractor cannot be construed as secondary action against either, but must be deemed primary against both. The secondary boycott provisions of the act and of the Taft substitute therefore have not the slightest application.

Does the Senator from Ohio agree that it was never the intention of Congress to have the secondary boycott provisions of the act apply to this situation?

In reply, Senator Taft assured Senator Ives that there was no secondary boycott in the situation described, explaining that (*ibid.*):

Mr. President, the secondary boycott ban is merely intended to prevent a union from injuring a third person who is [not] involved in any way in the dispute or strike, and therefore should not suffer economic damage simply because of the action of a labor union. It is not intended to apply to a case where the third party is, in effect, in cahoots with or acting as a part of the primary employer.

On the basis of the facts stated by the Senator from New York, I do not believe the law was intended to apply to the case he cites, where the secondary employer is so closely allied to the primary employer as to amount to an alter ego situation or an employer relationship. It should not apply, and I think Judge Rifkind practically decided that in the so-called Project Engineering Co. case. [*Douds v. Metropolitan Federation of Architects*, 75 F. Supp. 672 (S.D.N.Y.).]

I may say that one of the changes we are making in the law is to remove the ban on the secondary boycott in a case where there is a strike in one plant and then the work is transferred to another plant, because we feel that in that case the men who are striking should be able to picket the second plant in order that the men there may not work on the work on which the men in the first plant were refusing to work.

The spirit of the act is not intended to protect a man who in the last case I mentioned is cooperating with a primary employer and taking his work and doing the work which he is unable to do because of the strike.



So not only do I think the law of the case is as I have indicated, and does not prohibit the particular action referred to in the facts cited by the Senator in his question, which I have seen and have had the privilege of reading, but the spirit of the act is entirely contrary to applying it in that kind of a case.

On August 13, 1959, a colloquy took place on the House floor among Congressmen Teller, Landrum, and Griffin as to whether the pending House amendments changed the law in this situation. Congressman Teller repeated in full the 1949 colloquy between Senators Ives and Taft and then asked the following question (105 Cong. Rec. 15848-49, in 2 Leg. Hist. LMRDA 1680-81):

Does section 705(a) of H. R. 8400 dealing with section 8(b)(4) vary or modify in any way the interpretation of that section as stated in the colloquy between Senator Ives and Senator Taft, on the floor of the Senate on June 30, 1949, that the "ally" doctrine extends also to situations like the ladies' garment industry where, under its unique jobber-contractor system of production, it is recognized that the jobber and contractor are together engaged in a unified and integrated production effort?

Congressmen Landrum and Griffin emphatically assured Congressman Teller that no change was intended (105 Cong. Rec. 15849, in 2 Leg. Hist. LMRDA 1681):

MR. LANDRUM. Mr. Chairman, I wish to thank the gentleman for propounding that inquiry. I think it is a matter which ought to be clarified. I believe the gentleman knows that I have a desire to be fair. I have no desire whatsoever to outlaw anything that is legal. My efforts in this matter are solely directed at trying to close loopholes against that which is illegal. And so I say, Mr. Chairman, in response to the inquiry propounded by the gentleman, that I subscribe in whole to Senator Taft's reply to Senator Ives, and state that it is not my intention nor do I believe it to be included in H.R. 8400 that this doctrine of law concerning the "ally" doctrine is altered in any way.

MR. TELLER. And the gentleman does confirm the interpretation of Senator Taft?

MR. LANDRUM. Yes.

MR. TELLER. Mr. Chairman, I regard the gentleman from Georgia highly, as the gentleman knows. He has made valuable contributions to the deliberations of our committee and I respect him sincerely. I thank the gentleman.

May I propound the same question, Mr. Chairman, to my colleague, the gentleman from Michigan [Mr. Griffin].

MR. GRIFFIN. Mr. Chairman, the gentleman from New York now in the well of the House is one of the country's most learned men in this field. He knows the answer to the question before he asks it. The amendments to Taft-Hartley Act proposed in our bill, H.R. 8400, would in no way affect the existing law concerning the allied employer doctrine, and there is no intent to do so.

MR. TELLER. And the gentleman does accept the interpretation of Senator Taft?

MR. GRIFFIN. That is right.

Thereafter, on August 31, 1959, on the Senate floor, while the conference to reconcile the divergent House and Senate bills was still in progress, Senator Javits expressed concern that an unintended departure from the understood meaning might nevertheless take place. 105 Cong. Rec. 17381, in 2 Leg. Hist. LMRDA 1384-85. His point was expressed in an editorial of the New York Times which he spread upon the record, and which in part states that (*ibid.*):

Of all the complicated controversial issues raised by the House and Senate labor bills, on which the conference committee has asked instructions from the Senate, one is really not controversial nor is it especially complex. It ought to be quickly settled. We refer to subdivision 8(a) of section 705(a) of the Landrum-Griffin bill which prohibits the making of any collective agreement with an employer "whereby such employer \* \* \* agrees to cease doing business with any other person."

A narrow court interpretation of this language might wreck the whole structure of labor-management relations in the garment and clothing industries built up over the years and now become traditional. \* \* \*



So close have these two parts of the single production process become that jobbers and contractors have been considered as one in applying the provisions of the Taft-Hartley law which prohibit secondary boycotts. Senator Taft himself agreed to this in discussing the law's intent on the Senate floor and so have Representatives Landrum and Griffin as to their bill during the debate in the House and in the conference committee discussions.

But such assurances do not have the force of law. Whatever bill may emerge from the deliberations this week should clearly and explicitly exempt these traditional union-jobber agreements from secondary boycott prohibitions. This situation is a good illustration of the urgent need for care in drafting this legislation so as to avoid interference with already established and legitimate labor union practices in the effort to check corruption, dictatorship and the violation of the rights of innocent parties.

Senator Goldwater responded with assurance that "We conferees are in the very peculiar position of everyone of us agreeing that we do not intend to upset the status quo of the garment or apparel industries" (*ibid.*). Adoption by the conference and enactment by the Congress of the apparel and clothing proviso followed.

The apparel and clothing proviso is thus clearly the product of a superabundance of caution.<sup>9</sup> It specifically writes into the statute an

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<sup>9</sup> An additional reason for great caution, and accordingly for a specific proviso, is that subcontracting control in the apparel and clothing industry is so embracing and pervasive that it has virtually no counterpart in other industry. Thus, it may well have been thought that, while section 8(e) does not touch conventional subcontracting control in other industry, it would not be safe to assume that the same was necessarily true of the qualitatively different form of subcontracting control in the apparel and clothing industry. Hence the proviso to remove any possible doubt. The point is illustrated by the following summary of subcontracting control in the apparel and clothing industry which shows that it is without precedent in any other industry: jobbers and manufacturers may use only union contractors; they may use only such union contractors as they designate by submitting written notification of such designation to the union and receiving its approval; should they desire to cancel or modify the designation of any of their contractors, including adding or eliminating designated contractors, they

[Footnote continued on following page]

accepted interpretation of the meaning of both the Taft-Hartley Act and the 1959 amendments which would exist even without the proviso. It forecloses in that industry any argument that the relationship to each other of manufacturer-jobber and contractor-subcontractor is that of neutral employers whose business relationship is safeguarded from interruption. It requires them to be treated as a single employer.

But the proviso is but a specific manifestation of a general principle whose vitality remains undisturbed. The principle is that legally separate business entities, united by common ownership, control, cooperation, or integration, may not be entitled to the sheltered status of neutrals when economic pressure against one is exerted in aid of a dispute against the other. The pith of the idea was expressed and applied by this Court both before (Local No. 24, Teamsters v. N.L.R.B., 105 U.S. App. D.C. 271, 266 F. 2d 675) and since (Building Service Local 32-J, v. N.L.R.B., 313 F. 2d 880) the 1959 amendments. The Court explained that often the solution cannot be derived from "such legalistic formulae as 'independent contractors', 'co-employers', or 'allies'" but must rest upon considerations of operational integration. 266 F. 2d at 680; 313 F. 2d at 883. See also, Truck Drivers Local Union No. 728 v. Empire State Express, Inc., 293 F. 2d 414 (C.A. 5), cert. denied, 368 U.S. 931.

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must obtain approval from the union; manufacturers or jobbers must confine their production to their own shop and only to such contractors designated by them, and, in turn, contractors must confine their production to manufacturers or jobbers who have designated them; no contracting or subcontracting is permitted within the shop of any individual employer; payment by the manufacturer and jobber to their contractors, for the latter's services in fabricating the garments, must be sufficient to pay the wages of the contractors' employees plus a reasonable amount for overhead; and numerous other particulars of the relationship are regulated in detail. California Sportswear & Dress Ass'n, 54 FTC 835, 860-862; Subcontracting Clauses in Major Collective Bargaining Agreements, Bull. No. 1304, Bur. Lab. Stat., Dept. of Lab., 11-13, 26-30 (1961); Wolfson, The Role of the ILGWU in Stabilizing the Women's Garment Industry, 4 Ind. and Lab. Rel. Rev. 33 (1950). A proviso directed to this highly unique method of subcontracting control in this specific industry is no safe basis from which to deduce that conventional subcontracting control in other industries has been totally invalidated.

Nothing in the apparel and clothing proviso disturbs this vital principle. The proviso is but a specific application of it. It embodies a legislative determination that the requisite relationship exists among the associated employers in the apparel and clothing industry depriving them of neutral status vis-a-vis each other. It does not express a legislative determination that the requisite relationship does not exist in other industries and situations. Whether or not it does exist in other industries and situations requires, now as before, a particularized case by case consideration of the relationships and circumstances disclosed by each record.

There is thus nothing revolutionary in the apparel and clothing proviso and therefore nothing in it to justify the conclusion that Congress has by legislative indirection disallowed subcontracting control in other industries and situations. The advance which this proviso does make, not applicable elsewhere, lies in a little noticed part of it. Application of subcontracting control may sometimes run afoul of other provisions of the Act. Operating Engineers Local Union No. 3 v. N.L.R.B., 105 U.S. App. D.C. 307, 266 F. 2d 905, cert. denied, 361 U.S. 834. The apparel and clothing proviso prevents that possibility in the industry to which it applies, for its concluding sentence states that "Nothing in this Act shall prohibit enforcement of any agreement which is within the foregoing exception" (emphasis supplied).

In sum, neither proviso permits the conclusion that in every industry and situation not excepted by the provisos there may be no classification limiting the persons to whom work may be subcontracted to those who maintain commensurate labor standards. Hence, in this case, to assure preservation of the work and standards established by the agreement, the New Addendum may validly require that, where the employer has insufficient equipment to utilize its own employees, "it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries."

**IV. There Is No Evidence that an Object of the Strike  
Was To Require Self-Employed Truckers To  
Join the Union**

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To sustain the Board's finding that an object of the strike was to require self-employed truckers to join the Union, the Board's brief states that while the union security provision of the Central States agreement uses the term "employees," that term is not used in a "technical sense" but includes owner-operators (p. 29). There is literally nothing to support this statement except say-so. The Supreme Court has explained that, when it considered the precise provision pertaining to "owner-operators" that the Board's brief invokes in this case, it "did not . . . hold that owner-operators are in any sense 'employees.'" United States v. Drum, 368 U.S. 370, 382, n. 26.

**V. The Board's Invalidation of Article XII(1)  
In Toto Is Improper.**

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In supporting the Board's total invalidation of Article XII(1), the Board's brief states that we should not be overly disturbed because "there should be no difficulty at all in substituting a legal provision for the presently illegal one" (p. 30). It should therefore be made clear that, if the Board is right in voiding the whole of Article XII(1), the Union is forthwith free to bargain and take concerted action to obtain a legal substitute. Furthermore, if, as we have argued, only the illegal part should be excised and in its place it is valid to substitute a provision limiting subcontracting of overflow cartage to companies maintaining commensurate labor standards, the Union should be forthwith free to seek that provision. Finally, if, as the Board holds, the commensurate limitation is illegal, the Union should be forthwith free to seek deletion of the

provision authorizing subcontracting of overflow cartage. In other words, invalidation of all or part during the term of an agreement should not require the Union to await the termination of the agreement before seeking a legal promise to replace the invalid one. This should be made clear in terms.<sup>10</sup>

Respectfully submitted,

LESTER ASHER  
MELVIN R. ROSENBLOOM  
130 North Wells Street  
Chicago 6, Illinois

BERNARD DUNAU  
912 Dupont Circle Building  
Washington, D. C. 20036

*Attorneys for Petitioner*

February 1964

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<sup>10</sup> Special Note: On January 30, 1964, after this brief had been sent to the printer, this Court held that a commensurate labor standards clause was valid. Orange Belt District Council v. N.L.R.B., No. 17,388. This Court stated that "to limit the work to employers maintaining labor standards commensurate with those required by the Union" was within 'the area of a legitimate union claim.' It is not clear that the Board endorses these principles, but we have been shown no reason to gainsay them" (sl. op. p. 9).



**BRIEF FOR SWIFT & COMPANY AS AMICUS CURIAE**

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**United States Court of Appeals**  
for the District of Columbia Circuit

FOR THE DISTRICT OF COLUMBIA **FILED** JAN 15 1964

**No. 18,091**

*Nathan J. Paulson*  
CLERK

MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND MISCELLANEOUS TRUCK TERMINAL EMPLOYEES, LOCAL UNION No. 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,  
*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

On Petition to Review and Set Aside and on Cross-Petition to Enforce an Order of the National Labor Relations Board

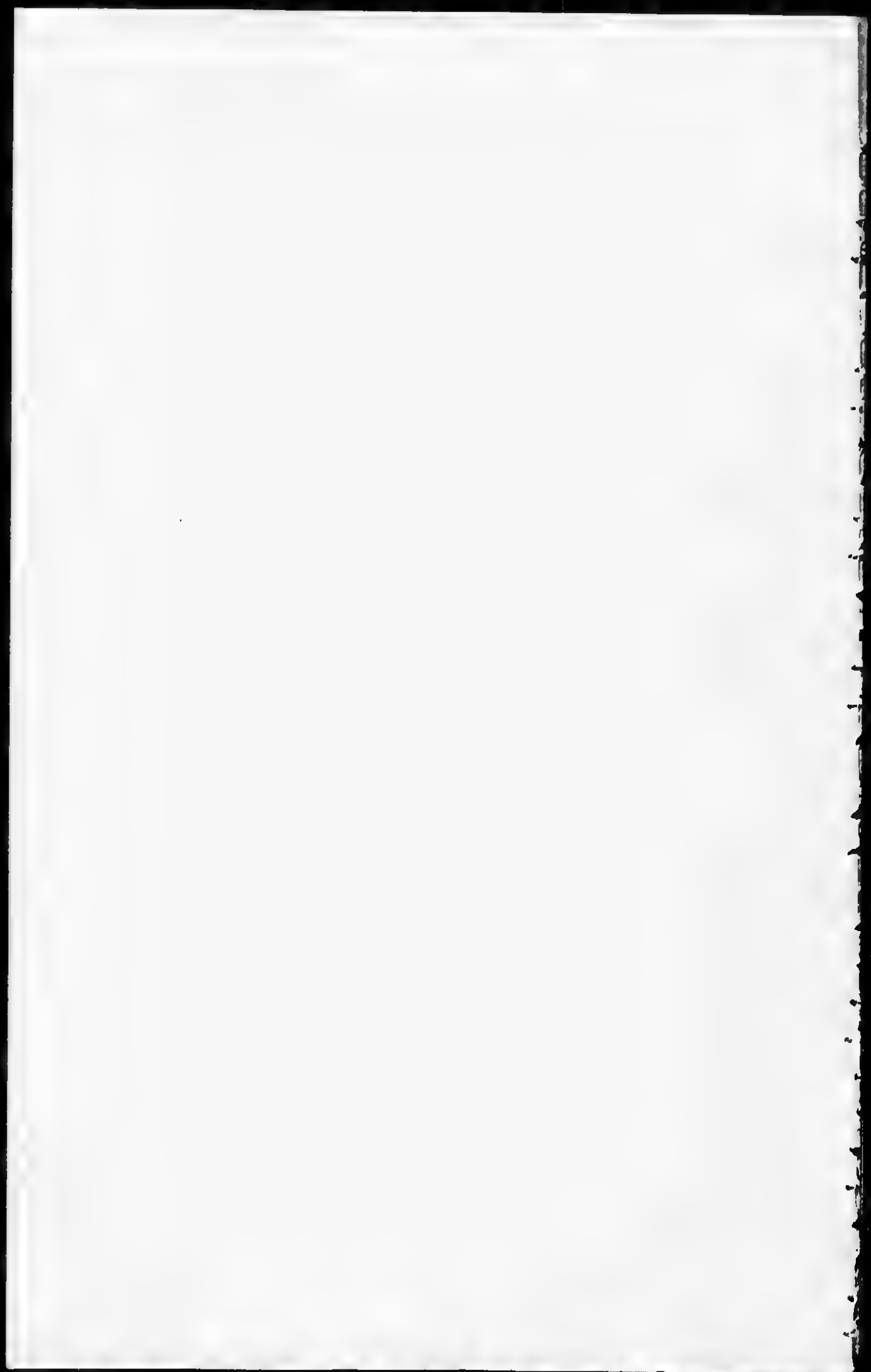
EARL G. SPIKER  
P. GORDON STAFFORD  
711 14th St., N.W.  
Washington 5, D. C.

DONALD H. BUSSMAN  
R. PAUL ECK  
115 W. Jackson Boulevard  
Chicago 4, Illinois

*Attorneys for  
Swift & Company*







#### **STATEMENT OF QUESTIONS PRESENTED**

The questions presented on page (i) of the Union's brief are the issues included in a Prehearing Conference Stipulation entered into by Counsel for the Union and Counsel for the National Labor Relations Board (J.A. 1-2).



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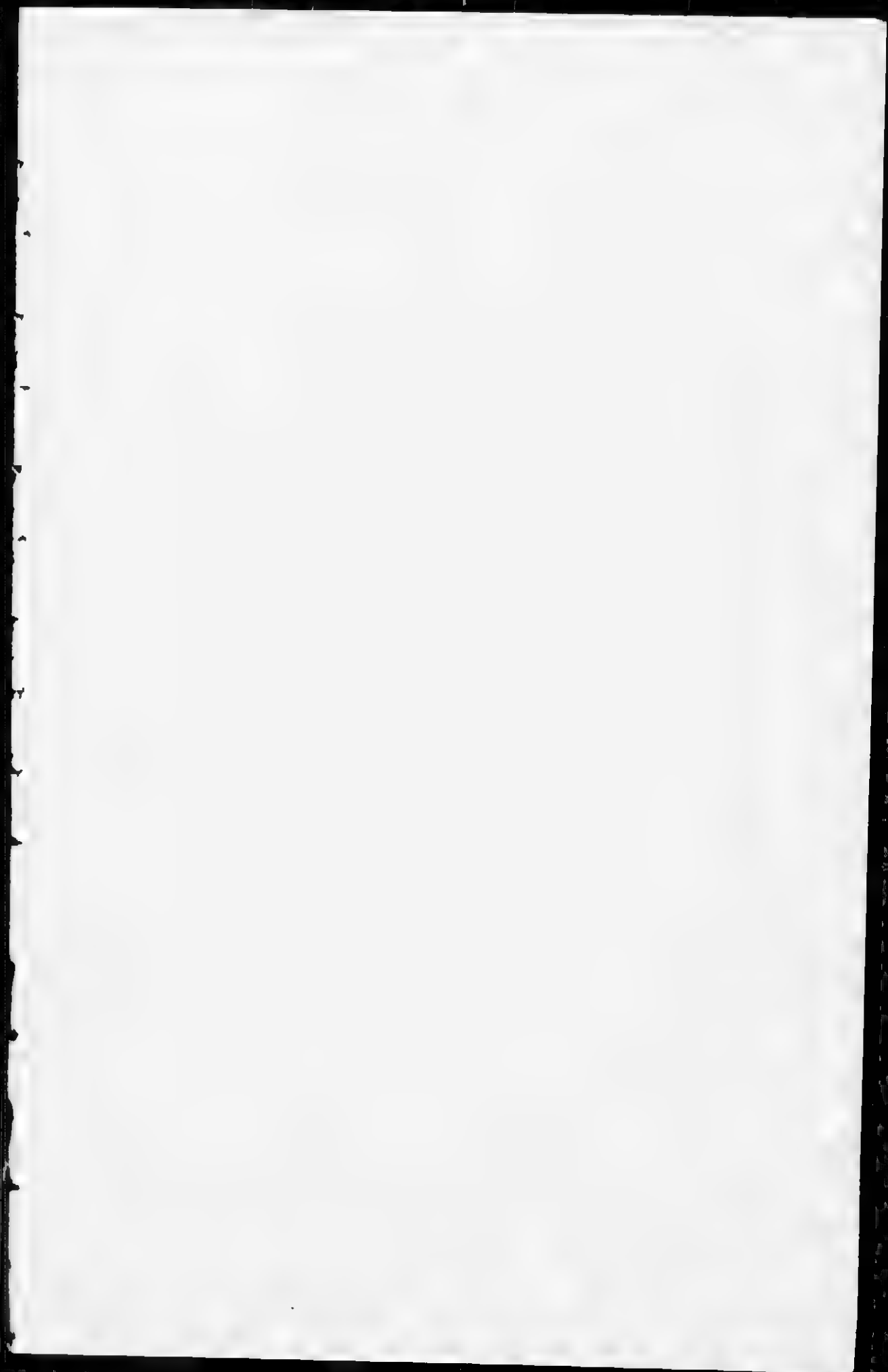
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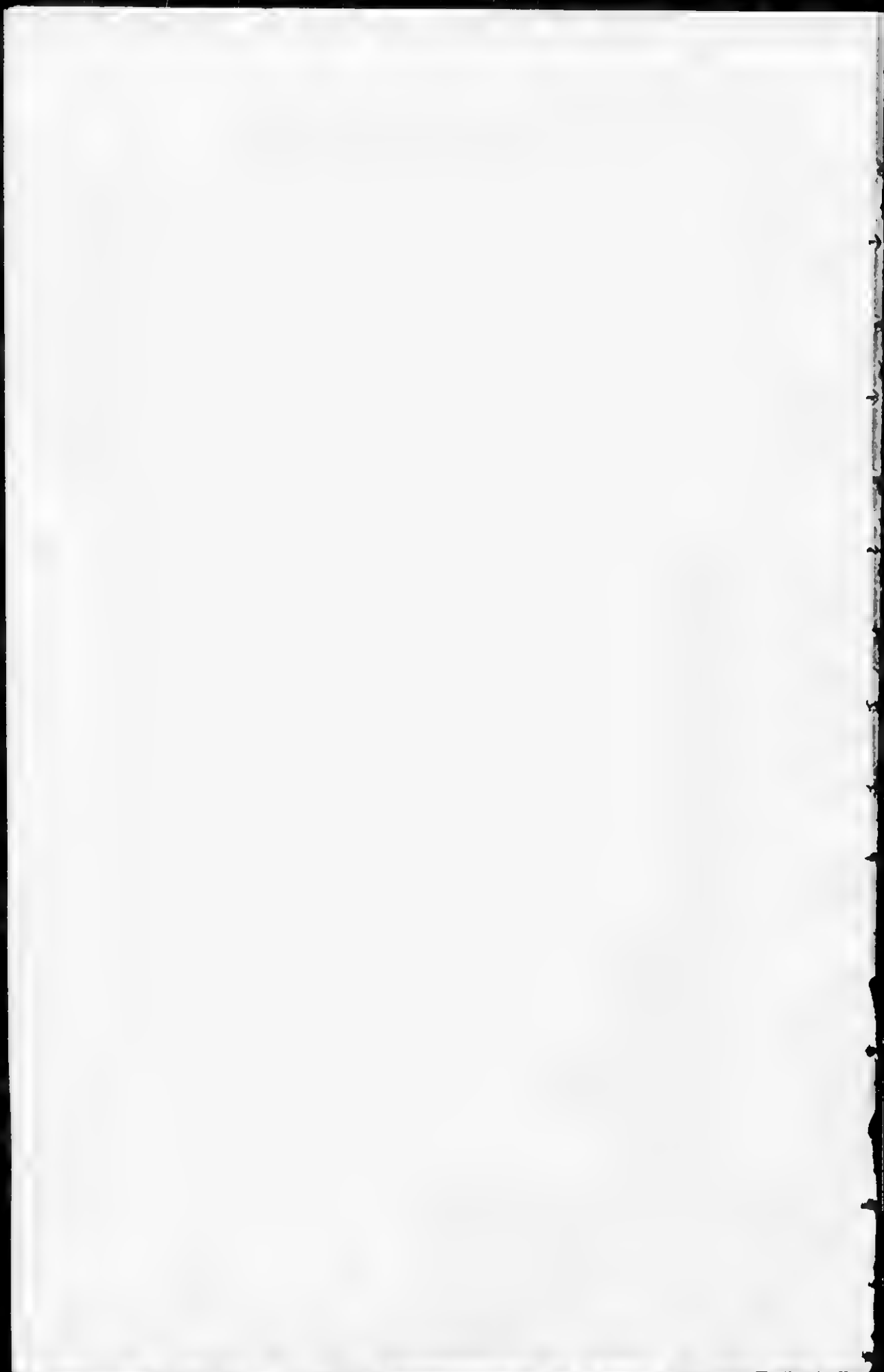
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# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 18,091

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MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND MISCELLANEOUS TRUCK TERMINAL EMPLOYEES, LOCAL UNION No. 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,  
*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

---

On Petition to Review and Set Aside and on Cross-Petition  
to Enforce an Order of the National Labor Relations Board

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BRIEF FOR SWIFT & COMPANY AS AMICUS CURIAE

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## COUNTER-STATEMENT OF THE CASE

By an Order of this Court, dated October 31, 1963, Swift & Company, herein called "Swift", was granted the right to file a brief as Amicus Curiae in this case.

Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. § 151 *et seq.*)<sup>1</sup> pro-

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<sup>1</sup> Hereinafter the word "Act" refers to the National Labor Relations Act, as amended.

vides that in proceedings in the United States Courts of Appeal for enforcement of orders of the National Labor Relations Board<sup>2</sup>: "The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive." Section 10(f) of the Act contains essentially the same provision with respect to proceedings for review of a Board's order (*infra*, p. 7). With regard to the "STATEMENT OF THE CASE" contained in the brief which was filed on behalf of the labor organization named in the caption, herein called the "Union", Swift hereby presents the following additions or corrections:

In the first paragraph of the Union's Statement of the Case (Union Br., p. 2), the Union refers to the "Packing House Agreement" covering the term from May 1, 1958 to May 1, 1961. As the Board found, based on the substantial evidence in the record considered as a whole, this Packing House Agreement did *not* contain any restriction on the packers' choice of over-the-road truckers or on the method of delivery of meat and meat products into the Chicago area and for a number of years the packers used for this purpose the services of certain interstate motor carriers (J.A. 40-41; 102-103, 107, 132-134, 135-136, 157-158).<sup>3</sup>

The Union's brief refers to Part 1 of Article XII of the Packing House Agreement (Union Br., p. 2). The collective bargaining agreement between the Union and Swift's Chicago meat packing plant, covering the term from May 1, 1958 to May 1, 1961, did not contain such provision (G.C. Ex. No. 26).

While the Union's Brief attempts to show that the major packers began moving their operations out of Chicago

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<sup>2</sup> Hereafter the word "Board" refers to the National Labor Relations Board.

<sup>3</sup> In each case, the references preceding the semicolon are to the Board's findings and the succeeding references to the supporting evidence.

"close to the middle" of the 1958-1961 collective bargaining agreement, citing certain testimony of John T. O'Brien, Secretary-Treasurer of the Union (Union Br., p. 3), this is inaccurate and fails to take into account the Board's findings of fact on this point which are supported by the substantial evidence in the record. The Trial Examiner found that

"As explained by O'Brien, Secretary-Treasurer of and chief negotiator for the Union, the major packers in 1955 gradually began moving their operations out of Chicago proper into other large cities . . ." (J.A. 10-11);

further, the Trial Examiner found that the dispute in the instant case "... arises from the packers' moving their facilities from Chicago starting in 1955, ..." (J.A. 28). The Board, which adopted the findings, conclusions and recommendations of the Trial Examiner, "as amplified", found that it was "the year 1955 when the major packers began relocating their packing facilities outside the Chicago area" (J.A. 51). Mr. O'Brien, Secretary-Treasurer of the Union, himself testified that the meat packers had started their move out of the Chicago area "back as late as 1955 on" (J.A. 157).

After finding that the major packers began moving their operations out of Chicago in 1955, the Trial Examiner found that the truck deliveries of meat products to customers within a 50-mile radius of the Chicago Stock Yards from a plant facility of certain packers located in the Chicago area continued, as before, to be made by drivers represented by the Union (J.A. 11)—neither the Trial Examiner nor the Board found, nor would the evidence cited in the Union's Brief support a finding, that such drivers were necessarily "employed by the packer" as the Union's Brief asserts (Union Br., p. 3). The Trial Examiner found that truck delivery of meat products to the Chicago area from out-of-state locations by Swift, Armour and Wilson would often be made directly to the customer

within the Chicago area by the over-the-road driver, thus by-passing the need for the services of the local driver (J.A. 11)—the Trial Examiner did not find, as the Union's Brief would indicate that such local drivers were necessarily "employed by the packer" (Union Br., pp. 3-4). The Trial Examiner's finding that only when a delivery is made from out of the city to a dock or terminal of a carrier in Chicago, or to a plant facility of Swift, Armour or Wilson in Chicago, is the work of local transshipment performed by the local driver (J.A. 11) is inaccurately elaborated upon in the Union's Brief to indicate that the local driver performing this work of "local transshipment" is the "packer's local driver" (Union Br., p. 4). The Trial Examiner stated that delivery "by a member of the Union" on this occasion of local transshipment is a consequence of Article XII of the agreement (J.A. 11); the Trial Examiner did not find, as the Union's Brief recites that delivery on such occasion was by the "packer's local driver" (Union Br., p. 4).

The Board found that in the 1961 negotiations for a new contract, the Union sought to incorporate certain restrictive proposals relating to deliveries into the Chicago area of meat products which originated out of state (J.A. 41). As the Board further found, throughout the negotiations which commenced with the meeting on April 21 and concluded with a strike on June 1, the Secretary-Treasurer of the Union, Mr. O'Brien, took the position that restrictive provisions were necessary because since 1955 the major packers had been moving their packing plants out of Chicago into other cities and had been utilizing over-the-road drivers to ship their meat and meat products into the Chicago area directly to the customers (J.A. 42). At the meeting of April 21, 1961, which is referred to in the Union's Brief (Union Br., p. 5), which was called by Mr. O'Brien, he said (J.A. 109-110 with emphasis added):

"... that he had called this particular meeting of all parties with whom they had a contract in the Chicago

area. He indicated that it was his desire to negotiate with the entire group which was something that hadn't been done prior to that time. He indicated that, in his opinion, the Union had a real problem in Chicago, that the larger packers had moved out of the area, that product was being shipped into the Chicago area from out of state, that he felt that we had been able to arrive at a satisfactory settlement down through the years on economic matters, but on this particular occasion, that they specifically had to have some language in the contract *which protected the Union* in terms of deliveries and pickups in the Chicago area, . . ."

In a subsequent meeting, on May 3, 1961, between the packer group and the Union, Mr. O'Brien "... went into great details to explain how *their membership was dwindling*, that so-called gypsies were making deliveries in the City of Chicago, and that they had to have some protection in the form of a contract that would restrict both pickups and deliveries in the city" (J.A. 111 with emphasis added). As late as May 25, 1961, Mr. O'Brien, in discussing the restrictive provisions of the First Addendum which he requested be made part of a new Agreement, said

"... that there were numerous brokers with permits arranging for drivers to come over the road into Chicago and make direct deliveries to consignees in the city after long road trips. He contrasted this with the so-called legitimate situation whereby an over-the-road driver brought his load to a city dock or terminal where the city man then took over for local distribution" (J.A. 87-88).

The Trial Examiner concluded that the gravamen voiced by O'Brien was that members of the Union were not making all the Chicago deliveries and at no time did he assert that the grievance was that the packers' own employees were not doing the work (J.A. 12). There is no basis in fact to support the assertion in the Union's Brief that the Union in these 1961 negotiations "addressed itself" to "recovering the jobs lost by the local drivers employed

within the Chicago area by Swift, Armour and Wilson . . .” (Union Br., p. 4).

In the May 3 meeting between the packers group and the Union, the packers group communicated to the Union that the packers group “would have no part of any language restricting deliveries or pickups in the Chicago area” and Mr. Healy, Vice President of the Union, said on behalf of the Union that the Union would “possibly have to strike the industry in Chicago” (J.A. 15; 112-113). In the subsequent informal meeting of May 8, 1961, the same Mr. Healy on behalf of the Union “made it clear” to the packers group “that there was no question but what the end result would have to result in some specific restrictive language” (J.A. 15; 113-114).

Frozen Food Express, Belford Trucking Company, Inc., Refrigerated Transport Co., Inc., Trans-Cold Express, Inc., Watkins Motor Lines, Inc. and Zero Refrigerated Lines are all engaged in transporting food, meat and meat products across state lines under certificates or permits issued by the Interstate Commerce Commission (J.A. 24). Since at least 1955, carriers who are not parties to Teamster contracts have been making deliveries and pickups in Chicago for packers and their customers without a terminal stopover or the employment of local or city drivers (J.A. 24; 102-103, 107, 132-134, 135-136, 157-158).

#### STATUTE INVOLVED

The relevant part of the Act not included in the Union’s brief (Union Br., p. A-1) is the following.

Section 10(e) of the Act, relating to the Board’s power to petition a court of appeals for enforcement of a Board order, provides in part:

“(e) . . . The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.”

Section 10(f) of the Act, relating to the review of a Board order by a court of appeals, provides in part:

"(f) . . . the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive."

#### SUMMARY OF ARGUMENT

I. The Board properly found the New Addendum was an agreement prohibited by Section 8(e) of the Act. Throughout negotiations in 1961, as is apparent in the first instance from the Union's demands with respect to Article XII(1) and the First Addendum, the Union sought to achieve the cessation of existing and well established business relations between the packers and certain unapproved carriers. Their final effort in this regard was the restrictive language of the New Addendum. With respect to the first part of the New Addendum, the Board properly determined it is an agreement violative of Section 8(e) for the evidence supports the conclusion that, in 1961, there were well established business relations of many years standing between the packers and certain carriers whereby the latter made shipments of meat products from points of origin outside Chicago into Chicago directly to the customer located in Chicago; the restrictive language of the first part of the New Addendum was intended to disrupt this method of shipment and the existing business relations by requiring the packers to cease doing business with the carrier, as a minimum, for the intra-city portion of the shipment; moreover, it is clear from the evidence that the employees for whom the Union sought to obtain this work had never customarily performed such work (i.e., any segment of the single, continuous shipment from a point of origin out of Chicago direct to the Chicago customer) and there is no merit to the argument that it is a "work protection" clause. With respect to the subcontracting clause of the New Addendum, the Board properly



determined that it is an agreement violative of Section 8(e) of the Act for it would permit the packers to do business with only those carriers which are acceptable to and have been approved by the Union; the Congressional history of Section 8(e) demonstrates that any such agreement is violative of Section 8(e); further, the purpose of this type of restriction on subcontracting is the regulation and establishment of approved conditions for employees of another employer, not a signator to the contract; the purpose of the clause was not work preservation because the work was work which admittedly the packer's employees could not perform because of insufficient equipment.

II. The issue of the validity of the First Addendum is not moot since it was pressed by the Union in the 1961 negotiations and the history of these negotiations demonstrate that the Union would demand similar restrictive language in future negotiations.

III. The Board properly found that an object of the strike was to force or require self-employed truckers to join "the Union" since this was one of the alternatives available under the First Addendum and obviously one of its purposes.

IV. The Board's order is valid and proper (1) in applying to "any other employers" because some negotiation meetings included a "conglomeration of industry"; (2) in applying to "any other labor organization" because the Union was not confining itself solely to Local 710 by referring in the First Addendum to other over-the-road Teamster agreements; and (3) in their treatment of Article XII(1), read in context of their Decision as a whole.

**ARGUMENT****I. BOARD PROPERLY FOUND THAT THE NEW ADDENDUM WAS AN AGREEMENT PROHIBITED BY SECTION 8(e) OF THE ACT**

Section 8(e) of the Act provides in relevant part as follows:

"It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting, or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, . . ."

In their Decision in this case, the Board found that both the Addendum labeled by the Board as the New Addendum and the Addendum labeled by the Board as the First Addendum were agreements proscribed by Section 8(e) of the Act (J.A. 56-57). In addition, the Board found that Article XII(1) of the Packing House Agreement was an agreement prohibited by Section 8(e) of the Act (J.A. 56-57). Before turning to the New Addendum, reference will be made to the Board's determination with respect to the First Addendum and said Article XII(1) of the Packing House Agreement.

**A. Board Properly Found That Both the First Addendum and Article XII(1) Are Agreements Prohibited by Section 8(e) of the Act.**

Article XII(1) contained in the Packing House Agreement covering the term from May 1, 1958, to May 1, 1961, reads as follows (J.A. 9):

"1. Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equipment, except when there is a lack of equipment at individual plants or branches, and then all effort will be made to contract a cartage com-

pany who employs members of Local No. 710. Employer agrees to do all possible to use own equipment at all times."

The Board found that this Article XII(1), inasmuch as it restricted subcontracting to carriers which employ Union members, was an agreement prohibited by Section 8(e) of the Act (J.A. 48-49, 57). In their brief, the Union concedes the validity of this determination by the Board; the Union acknowledges that "... subcontracting cannot be limited ... to cartage companies which employ members of the Union, as in Article XII(1)" (Union Br. p. 54). Accordingly, nothing further need be said with respect to this Article except to note that this determination by the Board is supported by another decision of the Board which in turn was enforced by this court.<sup>4</sup> *District No. 9, I.A.M. v. N.L.R.B.*, 134 NLRB 1363 enforced, 114 U.S. App. D.C. 287, 315 F.2d 33 (C.A.D.C.).

As set forth in the Prehearing Conference Stipulation, the only issue presented with respect to the First Addendum is whether its validity "... is moot and its litigation without useful purpose" (J.A. 1). We shall address ourselves to this issue at a later point in this brief (*infra*, p. 23).

With regard to this First Addendum, the Union says in their brief that "The Union acquiesces in the Board's determination that sub-contracting cannot be limited to cartage companies which have an agreement with it, as in the First Addendum ..." (Union's Br., p. 54). It is submitted that anything other than such acquiescence would be contrary to this Court's decision in recent cases. In *Bakery Wagon Drivers Union No. 484 v. N.L.R.B.*, —

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<sup>4</sup>In the Prehearing Conference Stipulation, one of the ancillary issues raised was whether the Board's order was proper with respect to XII(1) (J.A. 1-2). Swift submits that it was proper since the Board was concerned with illegal prohibition on subcontracting provided for in Article XII(1) (J.A. 48-49).

U.S. App. D.C. —, 321 F. 2d 353, 357 (C.A.D.C.), this Court said "The Board has also held, and we recently affirmed, that contracts which limit subcontracting to employers having a contract with the same union are illegal", citing *District No. 9, I.A.M. v. N.L.R.B.*, 114 U.S. App. D.C. 287, 315 F. 2d 33 (C.A.D.C.).

To be sure, this clearly prohibited restriction on subcontracting was one of the purposes to be served by the entire First Addendum. Truck shipments into Chicago were to be limited only to carriers signators to the Central States Agreement who must go to the city dock and no longer could deliver direct to the customer. Thus, the Union sought to cause the packers to cease entirely doing business with the carriers who then handled these shipments of the packers meat products and had done so for many years but who were not signators to any teamster over-the-road agreement. Union Secretary-Treasurer O'Brien himself acknowledged that it was a fact that such delivery of meat products was being done by carriers who were not parties to any over-the-road agreement (J.A. 157-158). These were the so-called "gypsies" whose business relationship with the packers was unacceptable according to the Union (J.A. 111).

The Union's objective and purpose throughout the 1961 negotiations remained exactly the same—their objective of seeking the end result of "some restrictive language" did not change (J.A. 113-114). Revised wording was forthcoming from time to time but their proscribed purpose of disrupting existing business relations between the packers and certain unapproved carriers remained firm from the time that the first proposal—requiring a cessation of business with carriers not signators to the Union's contracts—was demanded by the Union.

**B. With Respect to the First Part of the New Addendum, the Board Properly Determined That It Is An Agreement Violative of Section 8(e) of the Act.**

The Addendum referred to by the Board in their Decision as the New Addendum reads as follows (J.A. 43-44):

"It is agreed by and between the Employer and the Union that the following addendum shall become a part of the collective bargaining agreement entered into between the Employer and the Union.

"The Employer agrees that all meat and meat products which originate with or are processed or sold by the Employer and are destined to be sold or consigned to customers or consignees located within the city limits of Chicago shall be delivered to such customers or consignees from the Chicago city dock or other Chicago distribution or terminal facility of the Employer by employees covered by this agreement. It is specifically understood that all deliveries to customers or consignees of the Employer within the Chicago city limits shall be made only by employees covered by this agreement.

"In the event that the Employer does not have sufficient equipment at any given time to deliver his then current sales or consignments within the Chicago city limits, it may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.

"This addendum shall not in any way be construed to diminish the description of the work covered by this agreement as set forth in any provision of this agreement."

In their analysis, the Board considers the first full sentence of the second paragraph as the first part of the New Addendum (J.A. 49). The following considers such first part.

The Board properly found that the restrictive language of the first part of the New Addendum is an agreement in violation of Section 8(e) of the Act (J.A. 53). At the

outset, it is important to clearly delineate the presently existing and well-established method of shipment which the first part of the New Addendum would effect. This method of shipment, in turn, results in existing and well-established business relationships between packers and certain carriers.

For many years, Swift, as well as others, have shipped meat products from a point of origin outside Chicago directly to a customer located in Chicago. This type of direct shipment to the customer is a single, continuous operation entirely performed by the over-the-road driver who starts with the meat product from the point of origin outside Chicago and delivers it directly to the customer located in Chicago.

Such product has no contact with the packer's Chicago plant or facilities or the employees in any bargaining units which may exist at such Chicago plant or facility. Thus, such method of shipment is distinct and different from a "local delivery" of product which has its point of origin at the Chicago plant or facility and is delivered from there to the customer located in Chicago.

The record is replete with evidence to support the Board's finding that this method of shipment—i.e., the single continuous movement of meat products from an out-of-Chicago point of origin into Chicago for direct delivery by the over-the-road carrier to the Chicago customer—was a method of many years' standing at the time of the 1961 negotiations between the Union and the packers. The Trial Examiner found that this method of delivery had been in use by the packers "since at least 1955" (J.A. 24). The testimony of Union Secretary-Treasurer O'Brien confirms this (J.A. 157-158). The Board adopted, "as amplified," the "findings, conclusions and recommendations of the Trial Examiner" (J.A. 40). The evidence in the record clearly supports the finding that this method of direct shipment to the Chicago custom-

er was a well-established method of doing business between the packers and the carriers in 1961 (J.A. 102-103, 107, 132-134, 135-136). It has long been settled that the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole are conclusive. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 491.

In 1961, one of the Union's purposes was to put an end to this method of shipment. Thus, the Union demanded the restrictive language of the first part of the New Addendum. The packer and the carrier could no longer do business on the basis of the single, continuous shipment of meat products from an out-of-Chicago point of origin into Chicago for direct delivery by the over-the-road carrier to a customer located in Chicago. Instead, through the first part of the New Addendum, the Union would fragmentize this into two segments. This part of the New Addendum would require that all shipments into the Chicago area terminate at the Chicago city dock or the packer's terminal facilities (J.A. 50). From there, after additional time and expense made necessary by double handling, the delivery to Chicago customers would be made by someone other than the over-the-road driver. Accordingly, with the packer forced to change the method of delivery, the minimum result would be to curtail the scope of business with the carrier by withdrawing the intra-city portion of the delivery, to cease giving such business to the carrier.

Requiring the packer to withdraw from the carrier the intra-city portion of the delivery is a cessation of business within the meaning of Section 8(e). Nothing in Section 8(e) limits its application to an agreement which has the effect of terminating the entire business relationship between the signatory employer and a third party. In a case arising under Section 8(b)(4)(A) of the Act prior to the 1959 amendments, the Board's order based on a violation



of this section was enforced by the court although the carrier involved (Bonded) who was not in the Union's favor still received some of the employer's shipments, the court saying, "nor is it a defense to argue that Bonded received some business . . . because complete elimination of the company under attack is not necessary." *N.L.R.B. v. Local 294 Teamsters Union*, 273 F. 2d 696, 698 (C.A. 2).

In *Milk Drivers Union Local 753 and Pure Milk Association*, 141 NLRB No. 103, decided April 11, 1963, the Board said they found "... no merit in the Trial Examiner's holding that no violation was committed because local 753 was not seeking a cessation of business between Wanzer and PMA, but was only objecting to the method of delivery. The Board had heretofore held that a disruption of an existing business relationship, even though something less than a total cancellation of the relationship is a 'cease doing business' object, within the meaning of Section 8(b)(4)(B) of the Act." This court, in *Highway Truck Drivers, Local 107 v. N.L.R.B.*, 112 U.S. App. D.C. 312, 302 F. 2d 897 (C.A.D.C.) enforced a Board's finding of violations of Section 8(e), 8(b)(4)(A) and 8(b)(4)(B). In that case, which is similar in many respects to the instant situation, the Board had found that "... under the terms of this contract, non-Union owner-operators, utilized by Gallagher, could not deliver goods to consignees in the Philadelphia area, but would have to bring their trucks directly to Gallagher's terminal. In order to effectuate local delivery, the steel would then either have to be transferred to other trucks manned by members of the respondent, or the independent operators would have to hire Union members to drive their trucks. In either event, the contract would require a partial cessation of business between the independent owner-operators, who are paid on a ton-mile basis, and Gallagher." (131 NLRB 925, 931.)

In an attempt to secure a segment of this single, continuous movement of product for the first time for the

members of their Union, the Union candidly admits that they must fragmentize and segment the shipment into the two parts: (1) delivery to the Chicago city dock or other Chicago distribution or terminal facility of the packer, and (2) delivery from these points to the customer within the Chicago area (Union Br., pp. 16-17). It is only through this artificial segmentation of the single, continuous shipments into two parts that the Union is able to look solely at the last segment and make the further erroneous assertion that the first part of the New Addendum is a "work protection" agreement—i.e., that it "... is directed to restoring and preserving the local delivery work which the local drivers had previously performed but which they had lost." (Union Br., p. 16). This assertion obscures, of course, the facts which, as pointed out above, are supported by the evidence in the record; namely, that in the shipment of meat products from an out-of-Chicago point of origin into Chicago for direct delivery to a Chicago customer, the local drivers did not handle the last, or any other segment, of the movement of meat products (J.A. 102-103, 107, 132-134, 135-136). Even the Union is eventually forced to admit the fallacy of their own assertion when they state in their Brief: "the local driver does not do this work when the packer chooses to allocate it to the over-the-road driver by consigning a shipment directly to the customer." (Union Br., p. 35). Accordingly, it can not be argued that this was work "which the local drivers had previously performed but which they had lost."

Rather, as the Board found, the work which the Union seeks to acquire through the first part of the New Addendum was not work "customarily performed by" employees, covered by the packer's agreements with the Union (J.A. 50-51). In order to make the assertion in their Brief that the Board is wholly erroneous, the Union seems to confuse this direct to customer delivery originating out of Chicago with a local delivery from a packer's plant or

facility (Union Br., p. 34). The two methods of handling are totally different, however. Even with this apparent confusion, the Union's argument continues without basis in fact in the record as to Swift. Since Article XII (1) was not part of their 1958-61 agreement with the Union (*supra*, p. 2), Swift (meat packing plant) was not obligated to use their drivers or even drivers who are members of the Union in making their deliveries within fifty miles of the Chicago Stock Yards. This is true whether the product (1) originated with the Chicago plant or (2) originated out of Chicago, was brought to the Chicago plant and from there transshipped to a Chicago customer. Indeed, the testimony showed the deliveries to Chicago customers within fifty miles of Swift's meat packing plant in the Chicago Stock Yards were made by outside trucking companies (J.A. 104).

Thus, this argument by the Union of "work protection," contradicted as it is by the facts, can not save the first part of the New Addendum from illegality under Section 8(e). (Union Br., pp. 15-28). There can be no restoration and preservation for the Union's drivers of that work which they have not customarily performed. It is apparent that this was not the Union's intent nor their purpose in demanding the first part of the New Addendum. Instead, one of the purposes which the Union seeks to achieve through the first part of the New Addendum is to usurp for members of their Union, not even necessarily packer's employees (see testimony quoted *supra*, at pp. 5, 6), the work traditionally and customarily performed by other drivers or carriers by requiring the packers to cease dealing with the employers of such drivers for such work. Section 8(e) of the Act would not permit such an illegal agreement.

**C. With Respect to the Subcontracting Clause of the New Addendum, the Board Properly Determined That It Is An Agreement Violative of Section 8(e) of the Act.**

The subcontracting clause of the New Addendum provides that in the event the employer does not have sufficient equipment to make deliveries, the employer (J.A. 44, 53):

“... may contract with any cartage company whose truckdrivers enjoy the same or greater wages and other benefits as provided in this agreement for the making of such deliveries.”

This Court itself has taught that certain subcontracting clauses are agreements violative of Section 8(e) of the Act. *Bakery Wagon Drivers Union No. 484 v. N.L.R.B.*, — U.S. App. D.C. —, 321 F.2d 353 (C.A.D.C.); *District No. 9, I.A.M. v. N.L.R.B.*, 114 U.S. App. D.C. 287, 315 F.2d 33 (C.A.D.C.).

The subcontracting clause in the case now before the Court is keyed to approval by the Union of those working conditions of employees of other employers. As the Trial Examiner stated it: “... is apparent that if circumstances arose making this provision applicable, the packers would be restricted in their choice of cartage companies to those who meet with the approval of the Union.” (J.A. 27). Agreement to this clause would mean the packers are “not to do business with any other employer which is not acceptable to the Union.” *District No. 9, I.A.M. v. N.L.R.B.*, 114 U.S. App. D.C. 287, 291. Which would be the other employers who meet with the acceptance of the Union? There is no easily ascertainable and objective criteria even suggested by the Union’s subcontracting clause. Instead, the clause requires that it be cartage companies (i.e., employers other than employers signatory to the contract) whose employees receive the “same or greater” benefits than those provided in the agreement between the packers and the Union. Certainly the ap-

proved cartage companies would, therefore, be those already under contract with the Union. In any case, the inevitable conclusion remains that the Union retains the right to approve or disapprove of the cartage company to be used in each instance.

The Board has found in another case that a similar clause, which required the signatory employer to subcontract work only to contractors who pay the prevailing wage scale in the area and granted their employees the prevailing area working conditions, to be violative of Section 8(e) of the Act. *Brotherhood of Painters, Decorators & Paperhangers, Local 585*, 144 N.L.R.B. No. 22, 54 LRRM 1001. In that case the Board found that the plain purpose of such a subcontracting provision was to limit the persons with whom the signatory employer may do business. It is submitted that this determination by the Board, along with the Board's conclusion in the instant case now before this Court, is clearly in accord with the legislative history of Section 8(e). Congressional statements and debate in the enactment of the Landrum-Griffin Bill in 1959 demonstrate that Section 8(e) was intended to outlaw an agreement requiring a signatory employer to deal only with approved subcontractors. It is clear that one of the effects of such a clause would be the regulation of conditions of employment for employees of employers other than the signatory employer. The House Bill was introduced as H.R. 8400, 86th Cong. 1st Sess. (I Leg. Hist. LMRDA 619). This bill, as passed by the House, contained Section 705 which proposed language identical to that existing in Section 8(e) of the Act with the exception that the House Bill did not contain provisos relating to the garment and construction industries.

At one point in the legislative history of Section 8(e), Mr. Thompson and the late Mr. Kennedy prepared an analysis of the House Bill, setting forth a comparison of such bill to the bill which had been passed by the Sen-

ate. The Thompson-Kennedy analysis was largely critical of the House Bill. This analysis directed close attention to what was regarded by Messrs. Thompson and Kennedy as objectionable features contained in the House Bill.

The analysis set forth in detail "(T)he objections to extending the 'hot cargo' limitation into a general prohibition such as the House Bill contains" (105 Cong. Rec. 15222, II. Leg. Hist. LMRDA 1708). Instead of the general prohibition of the House Bill, the bill which had been passed by the Senate was confined to those employers who were subject to Part II of the Interstate Commerce Act. The analysis specifically stated (*ibid.* with emphasis added):

"... (the House Bill) unequivocally outlaws any contract between an employer and a Union 'whereby such employer ... (i.e. the jobber) ... agrees to refrain from ... doing business with any other person (i.e. *an unapproved contractor*)'."

In continuing to set forth its objections to the House Bill, the analysis said: "It would seem that a Union ought to be able to ask a concern to stop dealing with the company which does not observe fair labor standards" (*ibid.*).

Despite these arguments, on September 3, 1959, the joint conference of the House and the Senate adopted the House version, adding only certain provisos with respect to the garment and construction industries (I. Leg. Hist. LMRDA 943).

Thus it is plain that the prohibitions in the House Bill, which became Section 8(e), with the addition of certain provisos that are not applicable in the instant case, were adopted only after long debate and the explicit recognition of such prohibitions. The fact that Congress mentioned only certain types of contracting arrangements in the exemptions spelled out in Section 8(e), as enacted, im-

posing these limitations after long deliberation and debate, clearly indicates that Congress did not intend for other contracting arrangements to be exempt. As the legislative history makes clear, this was done by Congress after full recognition of the argument that the House Bill, which was passed with exceptions for the garment and construction industries, made unlawful an agreement whereby an employer accedes to a union's demand that he cease doing business with another employer who does not pay certain wages or grant certain benefits which, in the Union's opinion, such other employer should be paying.

It is apparent from the language of the restrictive sub-contracting clause with which the Court is concerned in this case that, in the Board's words, "The main thrust of the clause is regulation and establishment of approved conditions for *employees of another employer . . .*" (J.A. 54, with emphasis added). It does not, therefore, require extended argument to point out the impact of the clause or the purpose which the Union sought to achieve. In its effect the clause means the Union dictates the "wages and other benefits" of employees of another employer. Clearly, this comes squarely within the purview of illegal contract provisions which "... extend beyond the employer and are aimed really at the Union's difference with another employer." *Local 636, United Association v. N.L.R.B.*, 108 U.S. App. D.C. 24, 30, 278 F.2d 858, 864 (C.A.D.C.). An agreement designed to reach out through the contracting employer for the purpose of regulating and establishing approved conditions of employment for employees of another employer results in an illegal agreement proscribed by Section 8(e) and it was intended by the enactment of such statute "to do away entirely with contracts which come within Section 8(e)," *Los Angeles Mailers Union No. 9 v. N.L.R.B.*, 114 U.S. App. D.C. 72, 74, 311 F.2d 121, 123 (C.A.D.C.).



Also, the language of the subcontracting clause demanded by the Union in the New Addendum supports the Board's determination that its "main thrust" was not the definition and preservation of work of the packer's employees (J.A. 54). The very nature of the work with which the Union was concerning itself was work which the packer's employees represented by the Union were not doing and could not do since the clause only becomes operative when the packers are without sufficient delivery equipment. It is only then that the signatory employer could, under the restrictions of this clause, subcontract the delivery work. With the work then out of the signatory employer's bargaining unit, and to be performed by employees of another employer, the Union demands the right to establish, regulate and approve this latter employer's wages and other benefits paid. Therefore, this subcontracting restriction is not "strictly germane to the economic integrity of the principal work unit," *District No. 9, I.A.M. v. N.L.R.B.*, 114 U.S. App. D.C. 287, 290, 315 F. 2d 33, 36.

Indeed, the Union's illegal purpose underlying the subcontracting clause they demanded in the New Addendum is made clear by considering briefly the bargaining history to "shed light on the true character" of the Union's objective, *Sheet Metal Workers International Union v. N.L.R.B.*, 110 U.S. App. D.C. 302, 308, 293 F. 2d 141, 147 (C.A.D.C.). In the First Addendum which was demanded by the Union, the agreement sought was that overflow cartage shipments of meat products "... will be transported by cartage companies who are parties to ..." the Central States Agreement. The Union "acquiesces" in the Board's determination of the illegality of such a provision (Union Br., p. 54). As the Board found, the revised phraseology of the subcontracting clause of the New Addendum was only first presented by the Union on June 5 "after the unfair labor practice charges had been filed by the packers and in response to the pressure of the

injunction proceeding" (J.A. 55). It is apparent, therefore, as the Board concluded, the Union sought to make less objectionable the clearly unlawful language of the original subcontracting clause while still pursuing the same objective (J.A. 55). This is the only plausible explanation which squares with the timing of the events and the evidence in the record. The Union was, however, singularly unsuccessful in devising a subcontracting provision which would survive the reach of Section 8(e) of the Act. Instead of requiring in so many words that the outside carrier be a party to their agreement, the Union would dictate which carrier it would be—dependent upon the Union's acceptance of such carriers working conditions. If unacceptable—which could happen to any carrier not a party to their agreement—the Union would withhold approval and the signatory employer would forthwith be required to cease doing business with such carrier. Thus, the Union would limit the persons with whom the signatory employer may contract—contrary to the provisions of Section 8(e) of the Act.

## II. THE ISSUE OF THE VALIDITY OF THE FIRST ADDENDUM IS NOT MOOT

Indeed, the Union should wish to render moot this Court's consideration of the First Addendum—thereby hoping to bury it and thereafter proceed as though the First Addendum never existed. The uncontroverted fact remains, however, that it was the Union that chose to make this an issue in negotiations, despite the then existing prohibitions of Section 8(e). It was the Union's demands which brought the First Addendum into being. The Union's Brief itself refers to the Supreme Court's decision in *United States v. W. T. Grant Co.*, 345 U.S. 629, 633, quoting therefrom (Union Br. p. 57):

"The necessary determination is that there exists some cognizable danger of recurrent violation, something more than the mere possibility which serves to keep the case alive."

Swift's submits that the history of negotiations in 1961 clearly demonstrates the existence of the "cognizable danger" that the Union will seek the same or similar prohibitive clause in the future. Accordingly, the issue as to the validity of the First Addendum is not moot in these proceedings. As the Supreme Court said when they "quickly disposed" of a union contention that since certain picketing had ceased, a particular issue was moot, "We cannot say that there was no danger of recurrent violation." *Local 1976, United Brotherhood of Carpenters v. N.L.R.B.*, 357 U.S. 93, 97 (fn. 2).

**III. BOARD PROPERLY FOUND THAT AN OBJECT OF THE STRIKE WAS TO FORCE OR REQUIRE SELF-EMPLOYED TRUCKERS TO JOIN "THE UNION"**

The Board found that the object of the June 1, 1961 strike by the Union fell within the prohibition contained in Section 8(b)(4)(A) of the Act which provides, in part, that it shall be an unfair labor practice for a union to strike where the *object* is "forcing or requiring any . . . self-employed person to join any labor . . . organization . . ." (Union Br., Appendix A). The Trial Examiner found that this strike on June 1, 1961, occurred as a result of the refusal of the packers in Chicago to sign an agreement which included the First Addendum (J.A. 43). The First Addendum would have required all of the over-the-road shipments into Chicago to be done by a certificated carrier signators to the Central States or other over-the-road Teamster Motor Freight Agreement.

The force of this Addendum is therefore one which would prohibit the self-employed over-the-road truckers from doing business with the packers *or* require them to join the Union in order to be covered by the Teamster Agreement—the qualification for doing this shipping for the packers. These alternatives are apparent from the face of the Addendum. Such an effect is a necessary and

foreseeable result of the Addendum demanded by the Union and this fact, without more, is sufficient to support a violation of Section 8(b)(4)(A). *United Steel Workers Union, Local 4203 v. N.L.R.B.*, 111 U.S. App. D.C. 60, 294 F. 2d 256 (C.A.D.C.).

#### IV. THE BOARD'S ORDER IS VALID AND PROPER

The Board's order is valid and proper in respect to its extending to "any other employer" in parts 1(c), (d), and (e); to "any other labor organization" in part 1(e); and in its treatment of Article XII(1).<sup>5</sup>

It is clear from the history of negotiations in 1961 that the Union dealt with many employers in the contract negotiations (J.A. 109). As one witness described these negotiation meetings, there was present "... a conglomeration of industry of all types" (J.A. 109). It is also clear from the evidence in the record that such meetings were organized and called by the Union—it was at their behest that "a conglomeration of industry was present" (J.A. 109). Accordingly, it is clear that the Board's order must be broad and include "any other employer," and the Union's position that the Board's order should be narrowly restricted is without merit.

Also, it is evident from the language of the First Addendum that the Union, i.e., Local Union No. 710 of the Teamsters, was interested not only in the Central States Agreement but was interested as well in other "over-the-road teamster motor freight agreements" (J.A. 42). It is clear, therefore, that the Union's interest went beyond the confines of the interests of their own local Union. For this reason alone, it is proper that the Board's order extend to "any other labor organization".

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<sup>5</sup> The meaning of the Board's order with respect to Article XII(1) is treated earlier in this brief at p. 10.

**CONCLUSION**

For the reasons stated, Swift submits that the Union's petition to review should be denied and the Board's order enforced.

Respectfully submitted,

EARL G. SPIKER  
P. GORDON STAFFORD  
711 14th St., N.W.  
Washington 5, D. C.

DONALD H. BUSSMAN  
R. PAUL ECK  
115 W. Jackson Boulevard  
Chicago 4, Illinois

*Attorneys for  
Swift & Company*

January, 1964



BRIEF FOR AMICUS CURIAE  
ARMOUR AND COMPANY

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United States Court of Appeals  
FOR THE DISTRICT OF COLUMBIA CIRCUIT  
No. 18,091

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MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND MISCELLANEOUS TRUCK TERMINAL EMPLOYEES, LOCAL UNION NO. 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

*Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD,  
*Respondent.*

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ON PETITION TO REVIEW AND SET ASIDE AND ON CROSS-PETITION TO ENFORCE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

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SIDNEY A. DIAMOND  
WILLIAM J. ISAACSON  
ROBERT M. SCHANZER

KAYE, SCHOLER, FIERMAN, HAYS  
& HANDLER

425 Park Avenue  
New York 22, N. Y.

*Attorneys for Armour and Company*

NORBERT E. ANDERSON  
401 N. Wabash Avenue  
P.O. Box 9222  
Chicago 90, Illinois  
*Of Counsel*

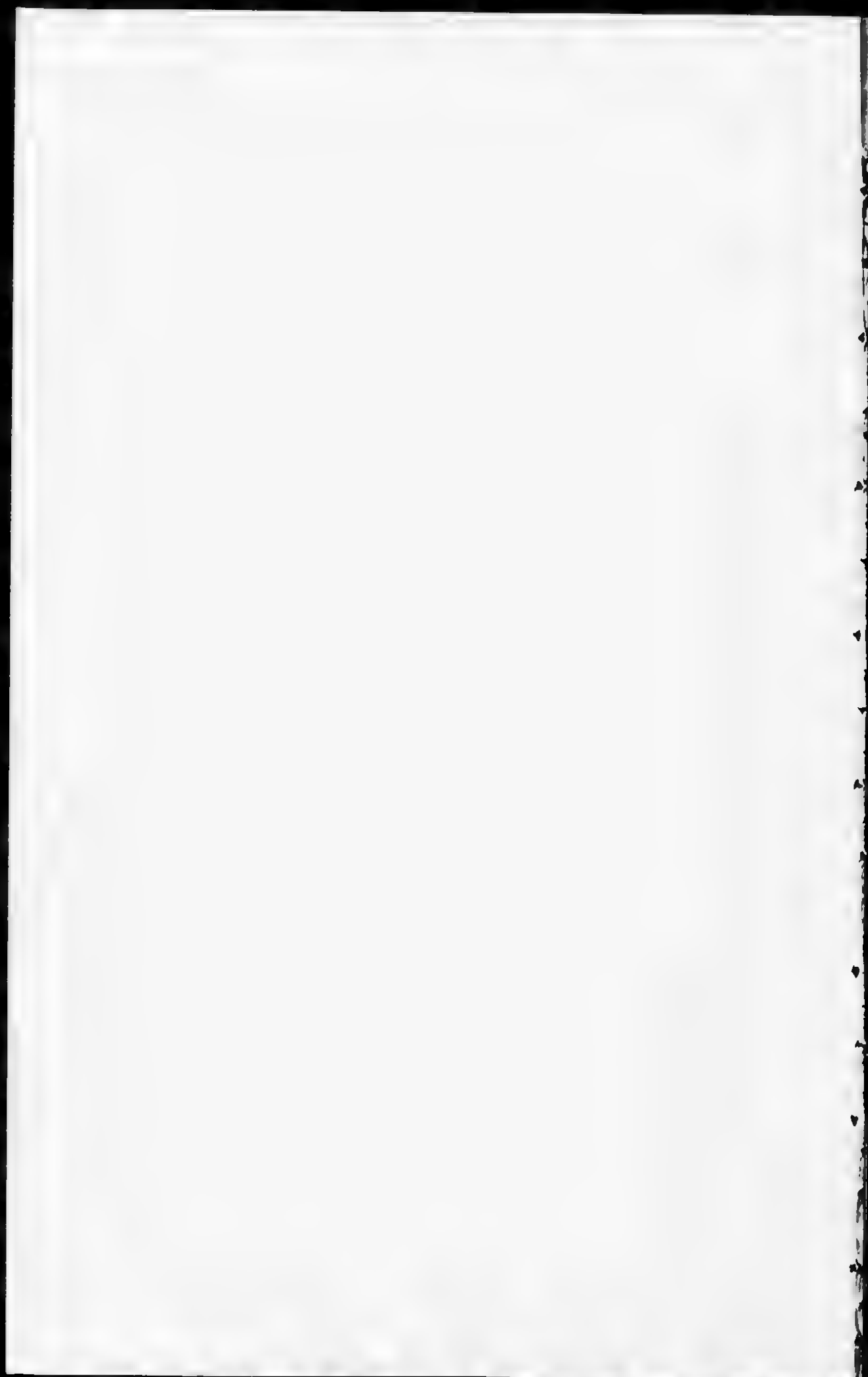
United States Court of Appeals  
for the District of Columbia Circuit

FILED JAN 20 1961

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*Nathan J. Paulson*  
CLERK





**STATEMENT OF QUESTIONS PRESENTED**

The questions presented are set forth on pages 1-2 of the Joint Appendix and on page (i) of petitioner's brief.



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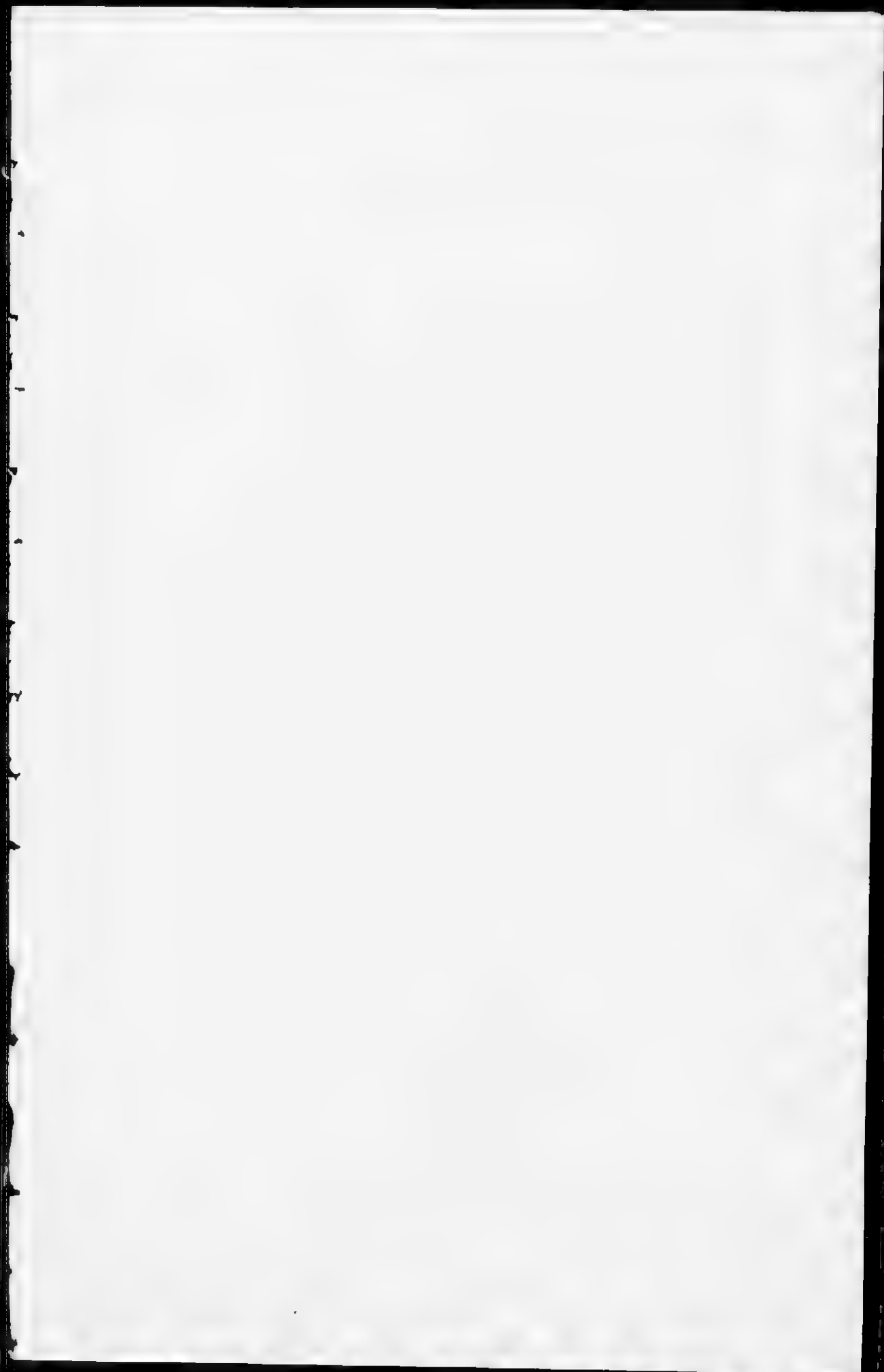
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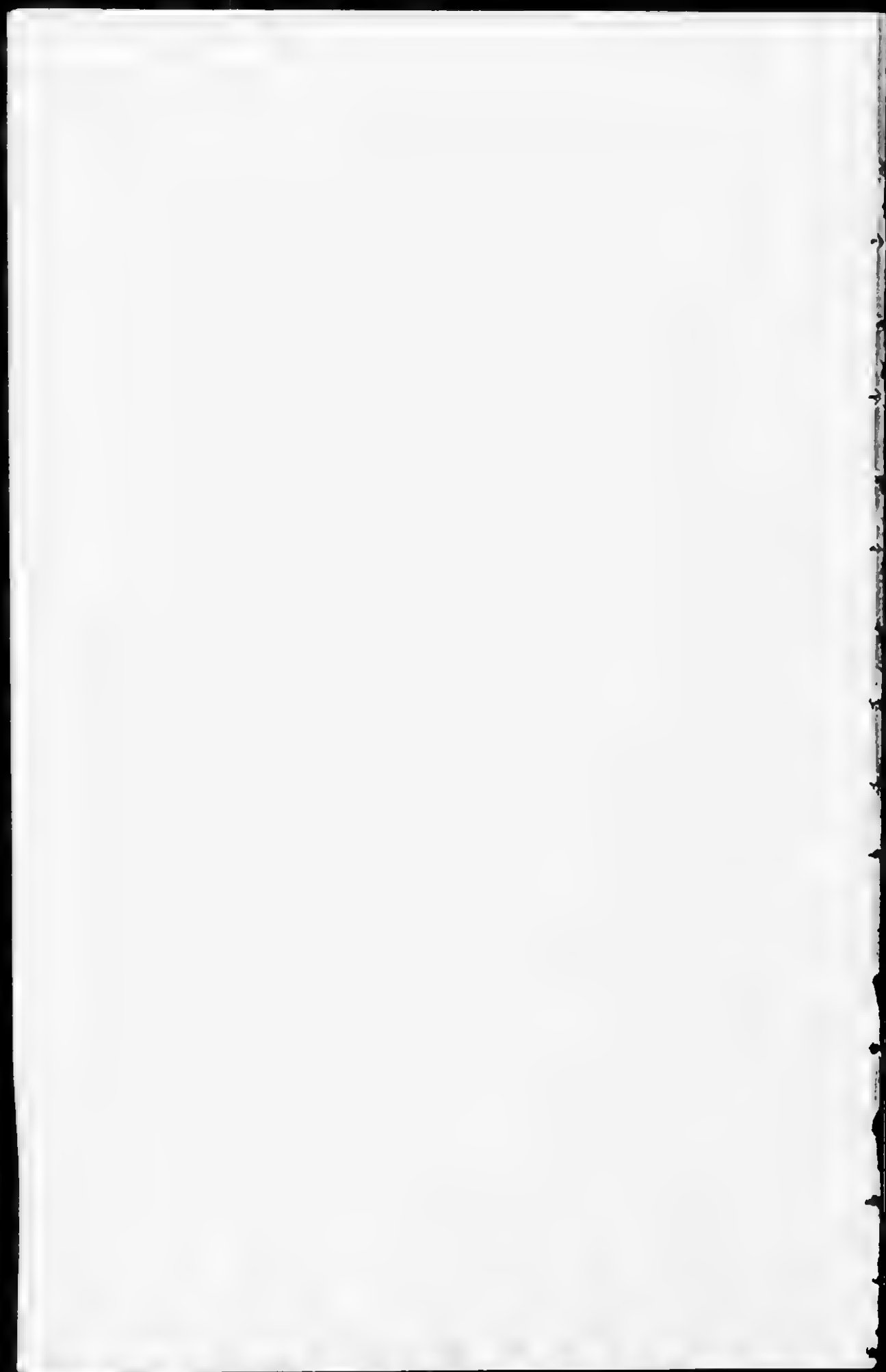
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**United States Court of Appeals**  
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MEAT AND HIGHWAY DRIVERS, DOCKMEN, HELPERS AND MISCELLANEOUS TRUCK TERMINAL EMPLOYEES, LOCAL UNION No. 710, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,  
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ON PETITION TO REVIEW AND SET ASIDE AND ON CROSS-PETITION TO ENFORCE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

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**BRIEF FOR AMICUS CURIAE**  
**ARMOUR AND COMPANY**

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**JURISDICTIONAL STATEMENT**

This case is before the Court on the petition of Local Union No. 710 of the International Brotherhood of Teamsters (hereinafter referred to as the "Union" or "Local 710") to review and set aside an order of the National Labor Relations Board. The Board has cross-petitioned for enforcement of the order. The jurisdiction of the Court is based on Section 10(f) of the National Labor Relations Act, as amended (29 U.S.C. §160(f)). Armour and Company and Swift & Company appear as amici

curiae pursuant to an order of this Court issued on October 31, 1963.

The Board's decision and order are reported at 143 N.L.R.B. No. 117 (Aug. 6, 1963) (J.A. 40-64).

### COUNTERSTATEMENT OF THE CASE

Armour accepts the statement of the facts set forth in petitioner's brief, as modified and corrected in the brief of the National Labor Relations Board. In order, however, that this Court may have before it certain additional relevant facts, the following are added:

(1) As the Board noted in its brief (Bd. Br., pp. 1-2), the evidence in the record establishes that deliveries from the three major packers' Chicago facilities to customers within fifty miles of the Chicago Stock Yards were performed by local truck drivers "represented by the Union" rather than, as petitioner stated, "drivers represented by the Union employed by the packer" (Pet. Br., p. 3). Similarly inaccurate is the statement on page 4 of petitioner's brief that "It was to the problem of recovering the jobs lost by the *local drivers employed within the Chicago area by Swift, Armour and Wilson* that the Union addressed itself in the 1961 negotiations." (Emphasis supplied.) On the contrary, the record fully supports the conclusion that the problem to which the Union addressed itself was the employment of Local 710 members as a whole, irrespective of the identity of their employer. Although the testimony of John T. O'Brien, Secretary-Treasurer of Local 710, is replete with references regarding the Union's desire to "recover the jobs" of "members of our organization" (J.A. 152, 154, 157), there is no reference which differentiates Local 710 members employed by the packers from other Local 710 members.

(2) Both the Trial Examiner (J.A. 10-11) and the Board (J.A. 51) found, as O'Brien testified (J.A. 157), that the relocation of the Chicago facilities began in 1955. On cross-examination, O'Brien further admitted that the "meat packers" have "been continuously shipping into Chicago since that time" (J.A. 157).

(3) Neither the Board's findings nor the evidence contained in the record support petitioner's conclusion that the relocation was "executed in force" during the 1958-1961 contract term (Pet. Br., p. 3, n. 2). Murrell Swanson, Manager of Industrial Relations at Wilson & Company, Inc., testified that Wilson had totally discontinued its slaughtering operations in Chicago by 1953 or 1954 (J.A. 131). Although the record shows a decrease in trucking employment between 1958 and 1961, there is no evidence showing how that decrease compared with the earlier decrease which took place between 1955 and 1958.

(4) Petitioner omitted any reference to Article XXXIII of Local 710's proposed amendments to the 1958 contract. Article XXXIII, which was designed to amend Article XII of the 1958 contract, provided (J.A. 160):

"Livestock, meat and meat products for delivery by truck to a distance not exceeding 50 miles from the Chicago Stock Yards, whether to final destination or point of transfer, shall be delivered by the company in their own equipment, except when there is a lack of equipment at individual plants or branches, and *than a cartage company who employs members of Local No. 710 will be used.* Employer agrees to do all possible to use own equipment at all times." (Emphasis supplied.)

Article XII, as contained in the 1958 contract, required that when there was a lack of equipment, the packers would make "all effort . . . to contract a cartage company who employs members of Local 710" (J.A. 203-04).

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Thus, Article XXXIII would have converted the purported preference of Article XII to a command. On June 5, 1961, after charges were filed and injunction proceedings begun, the language "a cartage company who employs members of Local 710" was replaced by the less innocuous appearing language "a cartage company whose truck drivers enjoy the same or greater wages and other benefits as provided in this agreement" (J.A. 20, 158). This demand was abandoned in the strike settlement negotiations on June 6, and Article XII was continued without change in the new contracts (J.A. 22).

### STATEMENT OF POINTS

1. The National Labor Relations Board properly concluded that the New Addendum was invalid within the meaning of Section 8(e) of the National Labor Relations Act, as amended.

2. As to all of the other questions, Armour and Company accepts and supports in their entirety the positions and arguments set forth in the Board's brief.

### SUMMARY OF ARGUMENT

(1) The Board brief demonstrates that the Board decision, treating the New Addendum as composed of two separate provisions, properly concluded that both provisions fell within the proscription of Section 8(e). Moreover, considering the New Addendum as the Union conceived, formulated and presented it and, in the light of the negotiations and all of the surrounding circumstances, it is clear that the New Addendum was a single integrated clause having one goal—the creation of a distribution pattern which would require local pickups and deliveries and the channeling of such local pickup and delivery

work to employees of cartage companies under contract with Local 710. A contractual arrangement having as a necessary consequence the withdrawal of work from and the disruption of an established business relationship with secondary employers—over-the-road truckers and non-union cartage companies—and as an ultimate objective the creation of work for employees of another company—a secondary employer—is not the kind of “work protection” agreement which is considered to be legitimate primary activity. Such an agreement, or a strike to force an employer to enter into such an agreement, is a clear violation of both the literal language and the spirit of Sections 8(b)(4)(i)(ii)(A) and (B) and 8(e).

(2) Moreover, whatever the lawful purposes are, if any, which may be served by the “work standards” provision herein in issue in other circumstances, the circumstances leading up to the substitution of the New Addendum for the First Addendum make it plain that the Union continued to seek in the New Addendum what it had previously sought in the First Addendum, a requirement that the meat packers subcontract work to cartage companies employing members of Local 710. The Board properly held that prior bargaining history, including, particularly, prior Union proposals, and the fact that the work standards clause was submitted only after unfair labor practice and injunction proceedings involving the First Addendum had been initiated, demonstrated that the Union in the New Addendum was merely resorting to an alternative formulation to achieve a “proscribed objective.”

## ARGUMENT

### I. The New Addendum, Considered In Its Entirety, Is Invalid Under Section 8(e) Of The Act

#### A. Introduction

For a period of many years Armour and the other major packers have been under a "standard packing house agreement" with Local 710 governing employment conditions with regard to local hauling of meat and meat products within the Chicago area. The agreement in effect during the controversy which gave rise to the unfair labor practices here in issue was for a term from 1958 to 1961.

This "standard agreement" did not attempt to restrict or control the packers' choice of over-the-road truckers or method of delivery into the Chicago area. As to pickups within the Chicago area, Article XII required that meat and meat products picked up from the employer's facilities in Chicago for delivery by truck to points within a distance "not exceeding 50 miles from the Chicago Stock Yards" were to be delivered by the employers "in their own equipment, except when there is a lack of equipment . . . and then all effort will be made to contract a cartage company who employs members of Local 710" (J.A. 9, 203-04).

Beginning in 1955 the major packers began closing their packing operations in Chicago. As a necessary corollary to these plant closings, the pattern of distribution within the Chicago area changed markedly. Instead of servicing customers in Chicago with meat and meat products packed and produced in Chicago facilities, the packers were now compelled to service their Chicago customers by direct over-the-road truck shipments from facilities located out-

side of Chicago. As the need for local pickups and deliveries decreased, the number of local truck drivers diminished.

In the 1961 negotiations for a new contract, O'Brien, although recognizing that the local drivers "were no longer needed to make the pickups and deliveries in the Chicago area" (J.A. 151), nevertheless insisted at the outset of the negotiations that Local 710 "had to have some language in the [new] contract which protected the Union in terms of deliveries and pickups in the Chicago area" (J.A. 110). Local 710 sought to drastically alter the pattern of distribution of meat and meat products to customers in the Chicago area and thereby artificially recreate the need for local shipments and, consequently, additional local drivers.

The Union sought in its proposal, designated Addendum to Agreement (hereinafter referred to as the "First Addendum"), to require that all deliveries into Chicago be made by a carrier party to a Teamster's "Central States or other Over-the-Road" agreement and that local overflow cartage be contracted only to companies under contract with Local 710 (J.A. 46-48, 167-68). Thus, Local 710, by interlocking its agreement with the Central States Over-the-Road agreement, was demanding that the major packers agree to terminate all of their shipments into the Chicago area at a central terminal or dock from which local pickup and delivery would be made by a local cartage company under contract with Local 710. In addition, the purported *preference* for cartage companies under contract with Local 710 theretofore provided in Article XII was to be converted into a command. Both clauses were to provide the "language in the contract which protected the Union in terms of deliveries and pickups in the Chicago area" (J.A. 110). On June 1, upon refusal of the major packers to agree to these terms, the Union struck.

On June 5, under the pressure of charges and the resultant injunction action, the Union changed the word-



ing of its demands and submitted the so-called New Addendum.<sup>1</sup> The New Addendum, as did the old Addendum (the First Addendum) operated to compel the discontinuance of direct over-the-road trucker deliveries to customers in the Chicago area and their replacement by local cartage companies under contract with Local 710. But the New Addendum was new only in its terminology. In its purpose, in its design and in its contemplated operation it was the First Addendum all over again. Local 710 continued to seek by agreement to force the transfer of the work from employers as to whose policies it took objection—over-the-road truckers and non-union local cartage companies—to local cartage companies as to whose policies it approved. The Board so found (J.A. 53, 54-56).

In evaluating the New Addendum, the Board treated it as though it were divided into two provisions, the first aimed at displacing the interstate carriers' drivers for the final phase of interstate deliveries with "the packers' own drivers represented by Local 710" (J.A. 50), and, the second granting to the Union the right to determine to whom the packers could contract their overflow local deliveries.

As to the "first provision" of the New Addendum, the Board properly disposed of the Union's work jurisdiction protection contention and concluded that the work which Local 710 sought had never been assigned by any of the packing house agreements to the jurisdiction of employees represented by Local 710, nor had such work ever been performed by them (J.A. 50-51). Deliveries from plants outside the City of Chicago to consumers within the City of Chicago had always been performed by over-the-road carriers and, since 1955, the volume of these deliveries has been increasing.

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<sup>1</sup> In this connection, note the corresponding alteration of Article XXXIII (pp. 3-4, *supra*), proposed at the same time.

In sum, the opening paragraph or "first provision" of the New Addendum is designed neither to *retain* nor *retrieve* for the packers' Chicago employees work which had traditionally been theirs. The purpose, literally construing the "first provision,"<sup>2</sup> is to expand their work jurisdiction by *capturing and acquiring* work which has always been done by others, the employees of the over-the-road carriers.

As to the second paragraph, the "second provision" of the New Addendum, the Board found that the "main thrust of the clause is regulation and establishment of approved conditions for employees of another employer rather than with the definition and preservation, for the exclusive performance of employees in the bargaining unit, of work that traditionally has been performed in that unit" (J.A. 54).

The Board's brief effectively demonstrates that the foregoing findings and conclusions regarding each of the "provisions" contained in the New Addendum are fully supported. It is not the purpose of this brief to restate the cogent arguments contained in the Board's brief in support of the Board's findings and conclusions except to make the following brief observations.

The Board's brief develops at length that the Board and court decisions uniformly support the proposition that a subcontracting clause that defines the persons with whom the signatory employer may or may not do business is precisely what Section 8(e) condemns, *i.e.*, a secondary object. The Board fully details the legislative history in its brief (Bd. Br., pp. 24-27), and demonstrates that the only permissible conclusion to be drawn from that history is that Congress decided, with the exception of

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<sup>2</sup> As shall hereinafter be demonstrated (pp. 11-15, *infra*), the fact is that Local 710 did not seek such work for the employee drivers of the packers but, rather, sought the work for the general membership of Local 710.

the clothing and apparel and the construction industries, that agreements whereby an employer agrees to take work away from groups of employers who are in the union's disfavor and to contract it to other employers whose labor policies meet the union's prescribed standards are unlawful.

The Union's insistence that it is the national labor policy to eliminate the competition of "substandard" labor conditions (Pet. Br., p. 47) wholly ignores the fundamental policy expressed in Section 8(e) and 8(b)(4). These statutory provisions were intended to preclude a union from enmeshing neutral employers in its dispute with others.

In any event, the New Addendum subcontracting provision is simply not a work standards clause. As Board Chairman McCulloch found, "The fact is that the Union was concerned here not with work which the employees it represented [at Armour, etc.] were doing or could do, but rather with work which, by definition, it would be unable to do and which would have to be subcontracted out in any event" (J.A. 66). Specifically, the so-called "work standards" clause applied only to "overflow work" which by definition had to be contracted out. All primary purposes had already been served by the restriction of subcontracting to overflow work. Therefore, the only effect of the so-called work standards clause was to enable the Union to pick and choose among secondary employers as to which one was to be favored with work that the primary employer could not undertake. To so differentiate between local cartage companies by allotting work to one class of employers of whom the Union approved and denying it to another class of employers of whom the Union disapproved, is a violation of Section 8(e).

But wholly aside from the foregoing, the New Addendum may be considered as the Union conceived, formulated and

presented it, as a single integrated clause with a single purpose, to secure jobs for the members of Local 710. While under its literal terms the New Addendum partook of the duality ascribed to it by the Board, it shall be demonstrated, however, that viewing this integrated clause in the light of all of the surrounding facts and circumstances, it is plain that the Union sought not to preserve, retrieve or capture jobs or work for the employees within the Armour bargaining unit but sought instead to capture such work or jobs for employees of cartage companies under contract with Local 710.

As previously noted (pp. 8-9, *supra*), even if it were to be assumed that the New Addendum breaks down into a first and second provision, both provisions are illegal on their face. Moreover, as shall be shown herein (pp. 15-17, *infra*), the second provision, examined and adjudged in the light of its origins and predecessor clauses, is illegal.

**B. The New Addendum, as Conceived, Formulated and Presented by the Union, Was a Single Indivisible Plan Designed to Achieve One Object, to Create Work for Members of Local 710 by Requiring the Packers to Cease Doing Business with Non-Union Over-the Road Contractors and Non-Union Local Cartage Companies**

The evidence relating to Local 710's objectives, the history of collective bargaining, the projected operation of the New Addendum and the economic realities of the situation all combine to support the conclusion that the New Addendum was a single indivisible clause intended to provide jobs for the members of Local 710.

First, as to the testimony regarding the Union's purpose in advancing the New Addendum—throughout the hearing it was made plain that Local 710 had but one

purpose in formulating and presenting Article XXXIII, the First Addendum, and, finally, the New Addendum. Local 710's Secretary-Treasurer, O'Brien, insisted throughout that Local 710 "had to have some language in the contract *which protected the Union* in terms of deliveries and pickups in the Chicago area" (J.A. 110). (Emphasis supplied.) That the entire Addendum was designed to create work for and "protect" the Union as a whole, and not to create jobs for the major meat packers' employees, is made explicit by O'Brien's testimony that (J.A. 152):

"We attempted to draft some language into the contract that would try and recover the jobs lost by the new policy of the larger packers of having their deliveries come in from out of the state into our area here by a road-driver that *not only did the local driver's work, but absorbed the city jobs that at one time belonged to members of our organization*, employees living here in the city of Chicago." (Emphasis supplied.)

Nowhere did O'Brien or any other Union official state that the object of the New Addendum was the capture of jobs for Armour employees.

At no point in the negotiations, either prior to or following the strike, was it suggested that the first or second part of the New Addendum were distinct proposals rather than parts of an indivisible whole. The Strike Settlement Agreement between the parties provided for a determination of whether the entire New Addendum, "Exhibit A is valid" (J.A. 163-64). (Emphasis supplied.) Correspondingly, it exacted an obligation from the Union "not [to] engage in a strike, stoppage or slowdown or other suspension of work, or picketing *regarding the provision*" (*ibid.*). (Emphasis supplied.) Similarly, every other reference to the New Addendum in the Strike Settlement Agreement was in the singular.

The New Addendum, as did the First Addendum, embodied a single program, the discontinuance of shipments directly to customers by over-the-road truckers and their replacement with local cartage companies employing members of Local 710. In order to achieve this single objective, the plan devised by the Union, as reflected in both the First and New Addendum, had two phases. The first phase provided for a complete or partial cessation of business with the independent over-the-road truckers or, alternatively, their complete replacement by truckers who observed the terms of the Central States Agreement. The second phase, the consummation of the program, was to be achieved by precluding the packers from dealing with local cartage companies which did not have the Union's approval and thereby chanelizing the work to companies under contract with or approved by Local 710.

But although each of the addenda had two phases, the first phase in each was but preliminary, albeit essential, to the second. The means or agency for carrying the product into Chicago was important only insofar as it required termination of the over-the-road trip at a central dock. As O'Brien stated, "We did not care how they got the deliveries into Chicago—by train, boat, or truck—as long as local delivery men were members of our organization and we recovered the jobs we lost through the depression, so-called depression, of plants moving out of the area. It made no difference to us how the merchandise got here, as long as our people got the work" (J.A. 157). In fact, O'Brien "cared" very much as to how the deliveries came to Chicago, because if they came by trucker under the Central States Agreement, the delivery would terminate at a central dock. The essential point, however, is that the method of delivery into Chicago was but the means of providing for and allotting local deliveries to Local 710 cartage companies.

Nor was there any real question as to who was going to handle the product once it came to a central dock. As noted (p. 11, *supra*), as a matter of literal contractual language it is arguable that the first part of the New Addendum would operate to reclaim work for the remaining driver employees of the packers. But when viewed realistically in the light of the actual circumstances surrounding the 1961 contract negotiations, it is clear that the protection of jobs for trucking employees of the major packers was neither of significance nor concern to the Union.<sup>3</sup> As of 1961, the relocation of facilities and the accompanying reduction of the work force of the major packers was a *fait accompli*. The work force at that time was obviously insufficient to handle the increased work load that would have been created had either Addendum been agreed to by the packers. The record indicates that between 1958 and 1961, Armour reduced its employment of truck drivers from about 118 to 37, Swift from about 160 to 35 or 37, and Wilson from about 55 to 6, an over-all reduction from 333 to 80 (J.A. 150-51). The packers clearly did not possess sufficient equipment or employees to carry out the local deliveries which Local 710 sought to establish and create by the New Addendum. Local 710 knew that while literally the packers had a choice of alternatives, in fact they had but one—the use of local cartage companies under agreement with or approved by Local 710.

If the major packers had accepted the Addendum, they would not have bought or leased a fleet of trucks, the need for which had long since vanished, to be manned by their

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<sup>3</sup> Even if the facts were otherwise, the New Addendum should be struck down in its entirety. The Supreme Court has made it clear that a violation of the statute occurs whenever "an objective . . . although not necessarily the only objective" is one proscribed by the statute. *Int'l Brotherhood of Electrical Workers v. NLRB*, 341 U.S. 694, 700 (1951); *NLRB v. Denver Bldg. & Construction Trades Council*, 341 U.S. 675, 688-89 (1951).



own employees. No one ever suggested or contemplated that the packers would purchase new equipment or hire additional drivers to make local deliveries. As a matter of fact, no attempt was even made to require the packers to retain their existing equipment, let alone buy new equipment.

Rejection of the New Addendum would not, as the Union claims in its Brief (Pet. Br., p. 48), operate as a "direct detriment to the employees covered by the agreement." They would have no less work.

Conversely, acceptance of the New Addendum would not, as the Union argues (*ibid.*), redound to the "direct benefit [of] their employment situation." They would have no more work.

An agreement with such purposes and effects cannot be characterized as a work jurisdiction agreement confiding the performance of defined work to employees covered by the contract. The Union's argument that the interdictions of Section 8(e) are no broader than the secondary boycotts proscribed by Section 8(b)(4)(B) and that, therefore, Section 8(e) reaches only agreements that sanction such boycotts, is beside the point. Whatever the relationship between Section 8(b)(4)(B) and 8(e) may be, the fact is that the New Addendum in this case *does* sanction a secondary boycott.

**C. The Second Provision of the New Addendum Must Be Examined and Judged in the Light of its Over-all Purpose as Shown by its Origins and Predecessor Clauses**

As noted above, even if it were assumed that the New Addendum breaks down into two provisions, each of the provisions, viewed on its face, is a violation of the law

(see pp. 8-10, *supra*). Moreover, the language of the so-called "second provision" of the New Addendum, read in the light of the record, is essentially nothing more than a circumlocutious way of saying "cartage companies who are under contract with Local 710." As Chairman McCulloch concluded, "Against the background of the provisions which preceded this latest proposal [the subcontracting provision of the New Addendum] and in the total context of Local 710's objectives . . . the Union in this provision was merely resorting to an alternative approach or formulation to achieve the same goal, namely, limited overflow work to employers having contracts with Local 710 or co-affiliates" (J.A. 66). Thus, even if it could be assumed that a clause limiting subcontracting to employers paying "the same or greater wages and other benefits" as the primary employer, may be validly employed in some circumstances, it is clear that such language was in this case a camouflage hastily contrived under the press of charges and an injunction to cover up an illegal object.

Petitioner, however, argues that once the New Addendum was substituted, the First Addendum "was irrevocably renounced" and, that "whatever the reason for the change, it was made and that is what counts" (Pet. Br. p. 53). What petitioner is really saying is that the New Addendum must be interpreted *in vacuo*; that the *only* relevant evidence regarding the object and purpose of the New Addendum is its language.

Neither the Board nor the courts have deemed themselves so bound. Language must be examined in the light of its origins, particularly where, as here, we are examining into the meaning and relationship of successive written proposals. Prior history is customarily utilized to determine the real intentions and motives of

parties to a labor dispute.<sup>4</sup> Furthermore, the intention of the parties is particularly relevant when the question is whether the object of the Union is primary, to preserve the integrity of the primary work unit, or secondary, to improve conditions of employees of persons other than the primary employer. Cf. *Local 761, Int'l Union of Electrical Workers v. NLRB*, 366 U.S. 667 (1961); *Seafarers Int'l Union v. NLRB*, 105 U.S. App. D.C. 211, 265 F. 2d 585, 590-91 (1959). Prior proposals provide a sound basis for drawing the inference that the New Addendum was designed to accomplish secondary and not primary goals.

In the enactment of Section 8(e) "Congress was not concerned with simply outlawing word formulae . . ."<sup>5</sup> The best authority for this proposition is Section 8(e) itself, which condemns hot cargo clauses "express or implied." The subcontracting portion of the New Addendum, examined in the light of all the facts, justifies the Board's conclusion that the Union had as an objective "forcing the packers to refrain from subcontracting the overflow cartage operations to cartage companies who do not qualify under the clause in order to protect working conditions of [Local 710's] members in the Chicago area, rather than the working conditions of employees in the Packers' unit . . ." (J.A. 55-56).

<sup>4</sup> See *Sheet Metal Workers' Int'l Ass'n v. NLRB*, 110 U.S. App. D.C. 302, 293 F. 2d 141, cert. denied, 368 U.S. 896 (1961); *NLRB v. National Shocs, Inc.*, 208 F. 2d 688 (2d Cir. 1953); *NLRB v. Reed & Prince Mfg. Co.*, 205 F. 2d 131, 139-40 (1st Cir.), cert. denied, 346 U.S. 887 (1953).

<sup>5</sup> *Amalgamated Lithographers of America (Ind.) and Local 17 of the Amalgamated Lithographers of America (Ind.) and Employing Lithographers*, 47 LRRM 1374, 1378, 130 N.L.R.B. 985 (1961), enforced as modified, 309 F. 2d 31 (9th Cir. 1962).

#### **D. Economic and Policy Considerations**

Local 710 has laid heavy emphasis, in its brief to the Board and now in its brief to this Court (Pet. Br., pp. 3-5, 6, 19, 46), on the "economic considerations" which it claims motivated its insistence on the New Addendum. Such considerations are irrelevant to the matters at issue in this case and afford no defense for the Union's unlawful conduct. However, since the Union has chosen to inject them into the case, it is appropriate to identify the economic consequences which would have followed if the packers had yielded to Local 710's demands.

The decision of the major packers to decentralize their operations and move from Chicago to other cities was impelled by major changes in the raising and supply of live stock, the shift from rail to truck transportation, changes in marketing and competition, and major population shifts.

The supply of live stock has become more regular and slaughtering operations are today less cyclical than they were. Therefore, extended packing house capacity at centralized locations for peak slaughtering is no longer necessary. Moreover, smaller firms have gained in size, and as a consequence, the larger packers slaughter a smaller percentage of the total live stock. Marketing patterns have also changed as a result of the decline of independent retailers, the rise of chain stores and supermarkets, and shifts in population. The tastes of the consuming public have changed and it now demands increased amounts of processed meats, the production of which requires a substantial number of man hours. This has increased the need for automated machinery and modern equipment. All of these economic factors combined to bring about the discontinuance of slaughtering operations in Chicago and their relocation in other cities.

An unavoidable consequence of this discontinuance was that the the packers had fewer jobs for people in Chicago, not only for truck drivers, but also for production workers, maintenance mechanics, and other employees. Nevertheless, the Chicago Teamsters have asked the packers, years after their move out of Chicago, to make believe that they are still there and to provide the same amount of work for local truck drivers that they would have had if the move had never occurred. The Chicago Teamsters have said: "Pretend that there is as much need for us now as there was, and be sure to give the 'makework' to our employers in the local cartage business."

The Second Addendum would require the major packers to make a totally unnecessary stop in Chicago to unload the goods, terminate the over-the-road carriers, reload the goods, and place the shipment in the hands of a local cartage company with whom the Chicago Teamsters have a contract. The result would be needless delay, extra handling, and increased costs—a gigantic "makework" program for Chicago Teamsters—no different in principle from and even more costly and disruptive than the refusal by a Teamster local to permit a truck to pass into a city unless one of its members is placed in the cab as "relief" or paid to "stand by."

The fundamental public policy question in this case is whether a union may prevent an employer from fully realizing and passing on to his customers the production, transportation, and distribution gains derived from strategic plant relocations by stopping him from marketing his products in certain geographic areas where he used to operate unless he is prepared to underwrite a subsidy to the union members equal to the wages they would have received if he had never left. The answer to this question must be no.

## CONCLUSION

For the reasons stated, the petition to review and set aside should be denied and the Board's cross-petition for enforcement of its order should be granted.

Respectfully submitted,

SIDNEY A. DIAMOND  
WILLIAM J. ISAACSON  
ROBERT M. SCHANZER

KAYE, SCHOLER, FIERMAN, HAYS  
& HANDLER  
425 Park Avenue  
New York 22, N. Y.

*Attorneys for Armour and Company*

NORBERT E. ANDERSON  
401 N. Wabash Avenue  
P.O. Box 9222  
Chicago 90, Illinois  
*Of Counsel*

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